TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1901. 1902.

No. 245. 145.

GUSTAVUS LEACH, WILLIAM F. LEACH, CHESTER H. SHAW, ET AL., PLAINTIFFS IN ERROR,

vs.

CHARLES R. BURR, EXECUTOR, AND SAMUEL H. LUCAS.

IN ERROR TO THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

FILED JULY 26, 1901.

(18,238.)

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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1901.

No. 385.

GUSTAVUS LEACH, WILLIAM F. LEACH, CHESTER H. SHAW, ET AL., PLAINTIFFS IN ERROR,

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CHARLES R. BURR, EXECUTOR, AND SAMUEL H. LUCAS.

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INDEX

	Original.	Print.
Caption	1	1
Transcript from supreme court of the District of Columbia	1	1
Petition of Charles R. Burr	1	1
Answer of heirs-at-law to petition for probate of will	2	2
Answer to caveat	3	3
Issues	4	4
Motion to vacate order of November 3, 1899	5	5
Motion to amend issues and order overruling same	5	5
Order setting issues for trial	6	6
Motion to change date for trial of issues	6	6
Order fixing date of trial of issues, February 19, 1900	7	7
Order of publication of issues and notification of trial thereof	7	7
Motion to reassign date of trial of issues and order overruling same	8	8
Proof of publication	9	9
Stipulation of counsel, filed March 1, 1900	10	10
Order making caveators plaintiffs and caveatees defendants	10	10
Order directing jury to return verdict sustaining will	11	11
Motion for new trial	11	11
Order admitting will to probate and record	12	12

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., JULY 26, 1901.

	Original.	Print
Motion to deny probate of will notwithstanding verdict of jury, and to vacate judgment	13	13
Order overruling motion to vacate probate of will, allowing appeal, and fixing bond at $100	14	14
Order extending time to settle bill of exceptions	14	14
Bill of exceptions	14	14
Testimony of Lyman B. Cutler	15	15
Joseph S. Tucker (excluded)	15	15
Deposition of Warren W. Rawson	15	15
George E. Fairbanks	16	16
William Francis Leach	17	17
Lois C. Cushing	17	18
Transcript No. 1315 from the health department, District of Columbia, record No. 111,295	19	19
Testimony of Dr. Clifton Mayfield	20	20
Irving C. Rosse	20	20
J. Remsey Nevitt	20	20
Frank P. Vale	20	20
Charles E. Emmons	20	20
William V. Marmion	20	20
A. B. Richardson	20	20
Will of Ezra W. Leach	20	20
Offer of proof as to manner of signing name	21	21
Deposition of Hugh T. Stevenson	21	21
Motion of caveatees to instruct jury to find verdict maintaining will	24	24
Judge's certificate to bill of exceptions	25	25
Motion to make costs on appeal charge upon estate	25	25
Order denying motion as to costs on appeal	26	25
Præcipe for transcript on appeal	26	26
Order extending time to file transcript	27	26
Register's certificate	27	27
Stipulation as to printing record	28	27
Minute entry of argument	29	28
Opinion	30	28
Judgment	35	38
Order allowing writ of error	36	38
Writ of error	37	38
Order overruling motion to approve bond	38	39
Mandate	39	39
Petition for writ of error	43	42
Writ of error	45	43
Bond on writ of error	46	44
Citation and service	47	45
Clerk's certificate	48	45

1 In the Court of Appeals of the District of Columbia.

GUSTAVUS LEACH ET AL., Appellants,
vs.
CHARLES R. BURR, Executor, ET AL. } No. 997.

In the Supreme Court of the District of Columbia, Special Term for Orphans' Court Business.

In the Matter of the Estate of EZRA W. LEACH. Adm. Doc. —. No. 7571.

Petition.

The petition of Charles R. Burr respectfully represents:

1. He is a citizen of Anacostia, District of Columbia, and files this petition by right of his appointment as executor, as hereinafter shown.

2. That Ezra W. Leach, late a citizen of Anacostia, in the said District, departed this life therein heretofore, to wit, on the twenty-first day of December, A. D. 1896, leaving a last will and testament dated the said twenty-first day of December, A. D. 1896, which is herewith filed for probate and record.

3. The said testator died seized and possessed of the following real estate situated in the said Anacostia, namely, lot numbered one hundred and thirty (130), in Uniontown, now Anacostia, District of Columbia; part of lot seven (7) and all of lot six (6), in section nine (9), of the subdivision of Barry farm, and lots four hundred and twenty-three (423), four hundred and twenty-four (424), and four hundred and twenty-five (425) of Anacostia, formerly known as Uniontown, of the estimated value in all of about eight thousand (8,000) dollars, and also the following personal property: Household effects worth about $50, promissory notes secured on real estate in the sum of $200, and money in bank, about $40.

Your petitioner has no certain knowledge touching the heirs-at-law and next of kin of the said Ezra W. Leach, but shows to the court that Gustavus Leach, William F. Leach, Chester H. Shaw, George L. Shaw, Francis H. Hunt, and Howland L. Hunt, of Weymouth, Massachusetts; Alice O. McNeil and Emma G. McNeil, of the county of Plymouth, in the State of Massachusetts; Annie O. Hunt, of Cumberland, Maine; Edward E. Hunt, of the county of Orange, in the State of Vermont; James E. Watson, Jr., Archelaus L. Reed, of Fall River, Massachusetts; Judson Hunt and Howland A. Hunt, of Suffolk, Massachusetts; Arthur E. Hunt, of the city and State of New York; Cyrus R. Reed and Gustavus L.
2 Reed, of Bristol, Massachusetts; William W. Hunt, Ann H. Presbrey, Howland L. Hunt, Luke R. Watson, Jane E. Closson, Mary Wood, Mine Bowker, and Ada Reed Edy are or claim to be the heirs-at-law or next of kin of said testator, being or claiming to be, as your petitioner is informed and believes, and therefore avers, cousins of the said testator, and all of them of full age.

Your petitioner is the executor named in the said last will and testament, and as such believes himself entitled to letters testamentary thereunder.

Wherefore, the premises considered, your petitioner prays that the said paper-writing bearing date the twenty-first day of December, A. D. 1896, be admitted to probate and record and letters testamentary thereunder granted to your petitioner.

CHAS. R. BURR.

DISTRICT OF COLUMBIA, *ss:*

I, Charles R. Burr, on oath say that I have read the foregoing petition by me subscribed and know the contents thereof, and that the matters and things therein set forth are true to the best of my knowledge, information, and belief.

CHAS. R. BURR.

Subscribed and sworn to before me this 24th day of June, A. D. 1899.

RUTLEDGE WILLSON,
[SEAL.] *Notary Public.*
J. J. DARLINGTON, *Solicitor.*

(Endorsement: Petition for granting letters testamentary and probate of will. Filed July 5, 1899.)

In the Supreme Court of the District of Columbia, Holding a Session for Orphans' Court Business.

In re Estate of EZRA W. LEACH. No. 7571, Ad. D. 23.

Now come the heirs-at-law of said decedent, through their attorney, J. H. Adriaans, and for answer to the petition filed herein on the 5th day of July, 1899, praying the probate of an alleged will of said decedent, say, without waiving their right to an adjudication of the respective motions filed by them on the 7th day of July, 1899, and the 7th day of August, 1899, that the said petition of July 5, 1899, does not substantially differ from a similar petition from the same source filed herein on the 7th day of January, 1897.

That publication was duly had on said latter petition, and the said heirs-at-law filed caveats thereto on the 12th day of February, 1897. They still stand by their said caveats, and have the same objections to the allowance of the petition filed July 5, 1899, as they had to the petition filed January 7, 1897. Issues were framed
3 in this court on said caveats on the 9th day of April, 1897, and docketed in the circuit court, as law 40978, on the 26th day of April, 1897; that a jury was sworn to try said issues on the 1st day of June, 1899, and, under instruction of the court, returned a verdict sustaining the will, but no judgment or decree of this court has been entered on said verdict. The testimony taken at the trial disclosed that the issues, as framed, did not truly represent the differences between the parties, but the trial jus-

tice refused to remand the issues to this court for amendment. As those issues only related to the personalty of said estate, the realty thereof was not thereby affected.

Further answering said petition of July 5, 1899, respondents say that the decedent, at the time of signing said alleged will, had no testamentary capacity; that prior thereto he had been subjected to threats, menaces, and duress exercised over him by Samuel H. Lucas, the beneficiary thereof, when decedent was too feeble to resist them; that at the time of signing said alleged will he did not own the property sought to be transmitted thereby, for that it had been disposed of by a previous deed; that said will does not contain the last wishes and will of said decedent; and for other and further reasons said will should be denied probate and the petition of July 5, 1899, dismissed.

JOHN H. ADRIAANS,
Attorney for Heirs-at-law.

August 30, 1899.

(Endorsement: Answer of heirs-at-law to petition for probate of will. Filed August 30th, 1899.)

In the Supreme Court of the District of Columbia, Special Term for Orphans' Court Business.

In re Estate of EZRA W. LEACH, Deceased. No. 7571, Ad. Doc. 23.

Answer to Caveat.

Charles R. Burr, the executor named in the will of the above-named decedent, and Samuel H. Lucas, for answer to the caveat filed in the above-entitled cause, say as follows:

They refer to and make part of this answer, in so far as the same may be material, their answer, filed herein on the 19th day of March, 1897, to the original caveat filed herein.

Further answering the said caveat, they deny the material allegations thereof and each and every of them, and aver the facts to be that the said paper-writing dated December 21st, 1896, is the last will and testament of the said Ezra W. Leach, deceased; that at the time of its execution the said Ezra W. Leach was of sound and disposing mind and capable of executing a valid deed or contract; that the said paper-writing was not executed under the influence, importunities, or persuasions of Samuel H. Lucas or any other person or persons, but was the free and voluntary act of the said testa-
4 tor; that said paper-writing was not executed under compulsion or threats, menaces, or duress inflicted upon the said Ezra W. Leach by Samuel H. Lucas or any other person or persons, as alleged, and that the said paper-writing was not procured by the fraud, misrepresentations, or artifice of Samuel H. Lucas or any other person or persons.

These respondents are willing that issues may be framed and tried

before a jury, according to law, so to determine the truth of the allegations of the said caveat.

CHAS. R. BURR.
SAMUEL H. LUCAS.

J. J. DARLINGTON,
Sol. for Respondents.

DISTRICT OF COLUMBIA, *ss:*

We, Charles R. Burr and Samuel H. Lucas, on oath say that we have read the foregoing answer by us subscribed and know the contents thereof; that the allegations therein set forth as of our own personal knowledge are true, and those set forth upon information and belief we believe to be true.

CHAS. R. BURR.
SAMUEL H. LUCAS.

Subscribed and sworn to before me this 10th day of October, A. D. 1899.

M. J. GRIFFITH,
[SEAL.] *Notary Public.*

(Endorsement: Answer to caveat. Filed Oct. 19, 1899.)

(Endorsement: Issues to be tried by jury. Filed Nov. 3, 1899.)

In the Supreme Court of the District of Columbia, Special Term for Orphans' Court Business.

In re Estate of EZRA W. LEACH, Deceased. No. 7571.

Issues.

Upon consideration of the caveat filed in the above-entitled cause and of the answer thereto, it is by the court, this 3d day of November, A. D. 1899, ordered that the following issues be, and they hereby are, ordered for trial by jury in this court:

1. Was the said Ezra W. Leach, at the time of the execution of the said paper-writing of December 21st, 1896, offered for probate and record as the last will and testament of the real estate of Ezra W. Leach, of sound mind, capable of executing a valid deed or contract?

2. Was the paper-writing bearing date the 21st day of December, A. D. 1896, and offered for probate and record as the last will and testament of the real estate of Ezra W. Leach, procured by the threats, menaces, and duress exercised over him by Samuel H. Lucas or any other person or persons?

3. Was the paper-writing bearing date the 21st day of December, A. D. 1896, and offered for probate and record as the last will and testament of the real estate of Ezra W. Leach, procured by the fraud of Samuel H. Lucas or any other person or persons?

The motion of the caveator to dismiss the petition for the trial of issues is overruled.

CHAS. C. COLE,
Asso. Justice.

In the Supreme Court of the District of Columbia, Holding a Special Term for Orphans' Court Business.

In re Estate of EZRA W. LEACH, Deceased. No. 7571, Adm'n Docket —.

Come now the heirs-at-law of said decedent and move the court to revoke the order passed herein on the third day of November, 1899, approving issues to be tried by jury respecting the real estate of said decedent, and for cause thereof say that at the time the alleged will was filed herein the orphans' court of this District was without jurisdiction to admit to probate any will involving real estate, or to frame issues based thereon, and that the recent act of Congress enlarging the jurisdiction of said court did not apply to cases where the will was offered for probate anteriorly to the date of the passage of the said act, and hence could not operate thereon.

J. H. ADRIAANS,
Attorney for Heirs-at-law.

To J. J. Darlington, Esq., att'y for *attorney for* devisee and executor:

Take notice hereby that on Friday, the 10th day of November, 1899, at 11 o'clock a. m., or as soon thereafter as I can be heard, I will present the above motion to the justice presiding over the orphans' court for action.

J. H. ADRIAANS,
Attorney for Heirs-at-law.

(Endorsement: Motion to vacate order of Nov. 3, 1899. Filed Nov. 7, 1899.)

In the Supreme Court of the District of Columbia, Holding a Special Term for Orphans' Court Business.

In re Estate of EZRA W. LEACH, Dec'd. No. 7571, Ad. Docket 23.

Now come the caveators and move the court to amend the issues heretofore approved herein for trial by adding thereto as follows:

"4. Is the paper-writing dated December 21, 1896, offered
6 herein as the last will and testament of said Ezra W. Leach, a valid, operative instrument?"

JOHN H. ADRIAANS,
Att'y for Caveators.

To J. J. Darlington, Esq., att'y for caveatee:

Please take notice that I will call the above motion to the attention of the court (Mr. Justice Cole presiding) on Friday, the 23rd day of November, 1899, at 10 o'clock a. m., or as soon thereafter as counsel can be heard.

JOHN H. ADRIAANS,
Att'y for Caveators.

Motion overruled.

CHAS. C. COLE,
Asso. Justice.

(Endorsement: Motion to amend issues filed in this cause. Filed Nov. 24, 1899.)

In the Supreme Court of the District of Columbia, Special Term for Orphans' Court Business.

In re Estate of EZRA W. LEACH, Deceased. No. 7571.

Order Setting Issues for Trial.

Issues having been framed in the above-entitled cause for trial by jury, it is hereby ordered that the same be, and they hereby are, set for trial on the 3rd day of January, A. D. 1900, provided that ten days prior to the time of the said trial all of the heirs-at-law and next of kin of the decedent, with all persons claiming under the will, be each served with a copy of said issues and a notification of the time and place of the trial thereof.

CHAS. C. COLE,
Asso. Justice.

(Endorsement: Order setting issues for trial. Filed Nov. 24, 1899.)

In the Supreme Court of the District of Columbia, Holding a Special Term for Orphans' Court Business.

In the Matter of the Estate of EZRA W. LEACH, Deceased. No. 7571, Ad'n Docket 23.

And now comes some of the caveators herein, by their attorney, and move the court to alter the date fixed for the trial of the issues herein, and for cause thereof state that there has been no publication of the said issues, as by the statute in such cases is made and provided.

J. H. ADRIAANS,
Attorney for Certain Caveators—Gustavus Leach, Wm. F. Leach, Chester H. Shaw, George L. Shaw, Howland L. Hunt, Francis H. Hunt, Alice O. McNeil, Emma G. McNeil, Wm. W. Hunt, Edward E. Hunt, Judson Hunt, Howland A. Hunt, Arthur E. Hunt, Annie O. Hunt.

7 To J. J. Darlington, Esq., attorney for caveatee:

Take notice hereby that on Tuesday, the 2nd day of January, 1900, at 10 o'clock a. m., or as soon thereafter as I can be heard, I will present the above motion to Mr. Justice Cole for his consideration and action.

J. H. ADRIAANS,
Attorney for Certain Caveators.

(Endorsement: Motion to change date for trial of issues herein. Filed Dec. 27, 1899.)

In the Supreme Court of the District of Columbia, Holding a Special Term for Orphans' Court Business.

In re Estate of EZRA W. LEACH. No. 7571, Ad. Docket —.

This cause coming on to be further heard upon the caveators' motion to alter the date of trial of the issues heretofore fixed for January 3, 1900, in order to permit intermediate service by publication upon all of the next of kin, it is thereupon by the court, this 30th day of December, 1899, ordered that the issues in this matter be and they are set down for trial on the 19th day of February, 1900.

CHAS. C. COLE,
Asso. Justice.

(Endorsement: Order fixing date of trial of issues Feb. 19, 1900. Filed Dec. 30, 1899.)

In the Supreme Court of the District of Columbia, Holding a Special Term for Orphans' Court Business.

In the Matter of the Estate of EZRA W. LEACH, Deceased. No. 7571, Adm'n Doc. 23.

It appearing to the court that the notification as to the trial of the issues in this case relating to the validity of the paper-writing dated the 21st day of December, A. D. 1896, purporting to be the last will and testament of Ezra W. Leach, deceased, has been returned, as to James E. Watson, Jr., Archelaus L. Reed, Cyrus P. Reed, Gustavus L. Reed, Ann A. Presbrey, Luke R. Watson, Jane E. Closson, Mary Wood, Mina Bowker, Luke Nelson Reed, & Ada Reed Eddy, "Not to be found," it is this 26th day of January, A. D. 1900, ordered that the issues heretofore framed in this case be, and they are hereby, set down for trial on the 26th day of February, A. D. 1900, and that this order and a copy of said issues heretofore framed shall be published twice a week for four weeks in the Evening Star.

CHAS. C. COLE, *Justice.*

Attest: LOUIS A. DENT,
Register of Wills, District of Columbia.

(Endorsement: Order of publication of issues and notification of trial thereof. Filed Jan. 26, 1900.)

8 In the Supreme Court of the District of Columbia, Holding a Special Term for Orphans' Court Business.

In re Estate of EZRA W. LEACH, Deceased. No. 7571, Ad'n Docket —.

Come now the caveators and move the court to assign a new date for the trial of the issues framed herein, and for cause thereof

say that the requisite provisions as to publication by the statute in such cases prescribed have not been complied with.

J. H. ADRIAANS,
Att'y for Caveators.

To J. J. Darlington, Esq., attorney for caveatees:

Take notice hereby that on Friday, the 23rd day of February 1900, at 10 a. m., or as soon thereafter as I can be heard, I will, move the justice holding said court to consider and act upon above motion.

J. H. ADRIAANS,
Attorney for Caveators.

Motion overruled 23d Feb., 1900.

CHAS. C. COLE, *J.*

(Endorsement: Motion to reassign date of trial of issues. Filed Feb. 21, 1900.)

In the Supreme Court of the District of Columbia, Holding a Special Term for Orphans' Court Business.

In the Matter of the Estate of EZRA W. LEACH, Deceased. No. 7571, Adm. Doc. 23.

It appearing to the court that the notification as to the trial of the issues in this case relating to the validity of the paper-writing dated the 21st day of December, A. D. 1896, purporting to be the last will and testament of Ezra W. Leach, deceased, has been returned, as to James E. Watson, Jr., Archelaus L. Reed, Cyrus P. Reed, Gustavus L. Reed, Ann A. Presbrey, Luke R. Watson, Jane E. Closson, Mary Wood, Mina Bowker, Luke Nelson Reed, and Ada Reed Eddy, "Not to be found," it is, this 26th day of January, A. D. 1900, ordered that the issues heretofore framed in this case be, and they are hereby, set down for trial on the 26th day of February, A. D. 1900, and that this order and a copy of said issues heretofore framed shall be published twice a week for four weeks in the Evening Star.

CHAS. C. COLE, *Justice.*

Attest: LOUIS A. DENT,
Register of Wills, District of Columbia.

Filed November 3, 1899.

9 In the Supreme Court of the District of Columbia, Special Term for Orphans' Court Business.

In re Estate of EZRA W. LEACH, Deceased. No. 7571.

Issues.

Upon consideration of the caveat filed in the above-entitled cause and of the answer thereto, it is by the court, this 3d day of November, A. D. 1899, ordered that the following issues be, and they hereby are, set for trial by jury in this court:

1. Was the said Ezra W. Leach, at the time of the execution of the said paper-writing of December 21st, 1896, offered for probate and record as the last will and testament of the real estate of Ezra W. Leach, of sound mind, capable of executing a valid deed or contract?

2. Was the paper-writing bearing date the 21st day of December, A. D. 1896, and offered for probate and record as the last will and testament of the real estate of Ezra W. Leach, procured by the threats, menaces, and duress exercised over him by Samuel H. Lucas or any other person or persons?

3. Was the paper-writing bearing date the 21st day of December, A. D. 1896, and offered for probate and record as the last will and testament of the real estate of Ezra W. Leach, procured by the fraud of Samuel H. Lucas or any other person or persons?

CHAS. C. COLE,
Asso. Justice.

A true copy.
January 26, 1900.

Test: LOUIS A. DENT,
Register of Wills, D. C.

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Certificate of Publication.

CITY AND COUNTY OF WASHINGTON, *District of Columbia,* } *ss:*

On this 28th day of February, A. D. one thousand nine hundred, personally appeared before me, Cornelius Eckhardt, a notary public in and for the city and county aforesaid, J. Whit Herron, who, being duly sworn according to law, declares that he is the advertising manager of the Evening Star, a daily newspaper published in this city and county of Washington, District of Columbia, and that the advertisement of which the annexed is a true copy was published on the following dates: January 26, 30, February 2, 6, 9, 13, 16, & 20, 1900, at a cost of forty and $\frac{56}{100}$ ($40.56) dollars.

J. WHIT HERRON,
Advertising Manager the Evening Star.

Sworn and subscribed to before me this 28th day of February, A. D. one thousand nine hundred.

CORNELIUS ECKHARDT,
[SEAL.] *Notary Public.*

10 (Endorsement: Proof of publication. Filed Mar. 1, 1900.)

In the Supreme Court of the District of Columbia, Special Term for Orphans' Court Business.

In re Estate of EZRA W. LEACH, Deceased. No. 7571.

Stipulation.

It is hereby stipulated between counsel that the depositions of Rev. Hugh T. Stevenson and A. M. Green, witnesses to the will of the above-named decedent, heretofore taken in this cause on behalf of the caveatee, and the depositions of the witnesses taken in Boston in law cause No. 40978, in the supreme court of the District of Columbia, on behalf of the caveators, may be read at any hearing of the above-entitled cause as if taken therein, and also in law cause No. 43370, in the supreme court of the District, subject, nevertheless, to all just exception to the relevancy, competency, and admissibility of such evidence.

J. J. DARLINGTON,
For Caveatee.
J. H. ADRIAANS,
For Caveators.

March 1, 1900.

(Endorsement: Stipulation. Filed Mar. 1, 1900.)

(*Extract from Proceedings—J. N. McG.* 29, *f.* 448.)

In the Supreme Court of the District of Columbia, Holding a Special Term for Orphans' Court Business.

In the Matter of the Estate of EZRA W. LEACH, Deceased. No. 7571, Admr. Doc.

John H. Adriaans, att'y for caveators.
Joseph J. Darlington, att'y for caveatees.

It is, this 5th day of March, 1900, by the court, upon the consideration thereof, ordered that the caveators, Gustavus Leach, William F. Leach, Chester H. Shaw, George L. Shaw, Howland L. Hunt, Francis H. Hunt, Alice O. McNeil, William W. Hunt, Emma G. McNeil, Edward E. Hunt, Judson Hunt, Howland N. Hunt, Arthur A. Hunt, Cyrus P. Reed, and Gustavus L. Reed, be, and they are hereby, made plaintiffs, and Charles R. Burr (named as executor in said will) and Samuel H. Lucas, caveatees, be, and they are hereby, made defendants in the trial of the issues in this cause.

Jury sworn and respited until tomorrow, Tuesday, March 6, 1900, at 10 o'clock a. m.

11 *Petit Jury.*

Oliver F. Miller.
William P. M. King.
Walter Burgess.
George E. Barker.
William B. Becker.
Harry E. Weeks.
William W. Riley.
John L. Grundling.
William M. Plummer.
Franklin P. Dove.
John Garden, Jr.
Julius W. Tolson.

CHAS. C. COLE, *J.*

(*Extract from Proceedings—J. N. McG.* # 29. *f.* 449.)

In the Supreme Court of the District of Columbia, Holding a Special Term for Orphans' Court Business.

TUESDAY, *March* 6, 1900.

In the Matter of the Estate of EZRA W. LEACH, Deceased. No. —.

John H. Adriaans, att'y for caveators.
Joseph J. Darlington, att'y for caveatees.

Now come again the parties aforesaid in the manner aforesaid and the same jury that was respited yesterday, and after a further hearing of the case the court ordered that they return a verdict sustaining the will.

Issues not signed.

And the court adjourned until tomorrow, Wednesday, March 7, 1900.

CHAS. C. COLE, *J.*

In the Supreme Court of the District of Columbia, Holding a Special Term for Orphans' Court Business.

In re Estate of EZRA W. LEACH, Dec'd. No. 7571, Ad'n Docket —.

Now come the caveators and move the court to set aside the verdict of the jury herein rendered and to grant them a new trial, and for cause thereof say:

1. That the court was without jurisdiction to try the issues framed herein for want of due publication against certain heirs of the decedent.

2. That the court could only acquire jurisdiction to try said issues as respects said heirs after publication twice a week for four weeks of a copy of the issues and notice of trial, according to the statute.

3. That in the present cause the publication was made once a week for two weeks and twice a week for three weeks only.

4. That the court erred in taking the cause from the jury at the close of the caveators' evidence-in-chief.

5. That the court erred in permitting a hypothetical question to

be submitted to the medical experts adduced by caveators
12 without thereafter requiring the caveatees to adduce evidence tending to show the condition indicated in the said hypothesis existed in fact in the case at bar.

6. That the court erred in its instructions to the jury during the trial of said cause.

7. That the court erred in instructing the jury to answer the issues in favor of the caveatees.

8. That the court erred in refusing to give caveators opportunity to produce the attending physician of the decedent to prove the cause of death, the said physician having been summoned by the caveatees and having been in attendance during the trial, but temporarily absent at the required moment, being close to the usual hour of adjournment for the day.

9. The court erred in excluding from the jury as *prima facie* evidence of the cause of death of the decedent a certificate of the health officer of the District of Columbia, under his seal, containing such information.

10. That the court erred in refusing to permit said certificate to be read for some purposes, although permitted for other purposes, and in refusing to admit said certificate in evidence as to the cause of death.

L. A. BAILEY,
J. H. ADRIAANS,
Attorneys for Caveators.

(Endorsement: Motion for new trial. Filed Mar. 8, 1900.)

In the Supreme Court of the District of Columbia, Special Term for Orphans' Court Business.

In re Estate of EZRA W. LEACH. No. 7571.

Order.

The issues certified to the supreme court for trial by jury under an order passed herein on the 1st day of June, 1899, under the caveat to the will of Ezra W. Leach, filed by Cyrus P. Reed, Gustavus L. Reed, Gustavus Leach, William F. Leach, Chester H. Shaw, George L. Shaw, Howland L. Hunt, Francis H. Hunt, Alice O. McNeil, Emma G. McNeil, William W. Hunt, Edward E. Hunt, Judson Hunt, Howland A. Hunt, and Arthur E. Hunt, having been found in favor of the said will, as appears to the satisfaction of the court by the answers of the jurors to the said issues, certified by the clerk, and filed herein, it is by the court, this 17th day of March, A. D. 1900, adjudged, ordered, and decreed that the paper-writing bearing date the 21st day of December, 1896, purporting to be the last will and testament of Ezra W. Leach, be, and the same hereby is, admitted to probate and record, and that letters testamentary upon the estate of the said decedent do issue to Charles R. Burr, the executor therein named, upon his giving bond in the penalty of five

hundred dollars, conditioned for the faithful performance of
13 his trust; and it is further adjudged, ordered, and decreed that the said Charles R. Burr, the executor, as aforesaid, do recover against the said caveators the costs incurred under their said caveat; which costs are hereby taxed at the sum of $49.10 *dollars*, and that they have execution therefor as at law.

And the said paper-writing bearing date the said 21st day of December, 1896, having been further offered as a will of real estate, as provided by law, and it appearing to the satisfaction of the court that the issues framed upon the caveat filed against the admission of the said paper-writing for probate and record as prayed have been determined in favor of the said will at the trial thereof before a jury, after due proof of the notice of publication required by the order of the court, and no other further issues having been demanded by any party in interest, after due opportunity afforded therefor, and the motion of the caveator for a new trial having been heard and overruled, it is by the court, this 17th day of March, A. D. 1900, further adjudged, ordered, and decreed that the said paper-writing be, and the same hereby is, admitted to probate and record as the valid last will and testament of the said Ezra W. Leach, duly executed to pass real estate of the said testator within said District; and it is further adjudged, ordered, and decreed, that the said Charles R. Burr, executor, as aforesaid, do recover against the said caveators the cost of the proceedings to determine the validity of the said will as a will of real estate, which *are* hereby taxed at the sum of $128.24 *dollars*, and that he have execution therefor as at law.

CHAS. C. COLE, *J.*

(Endorsement: Order admitting will to probate and record. Filed Mar. 17, 1900.)

In the Supreme Court of the District of Columbia.

In re Estate of EZRA W. LEACH, Deceased. No. 7571, Ad'n Docket —.

Now come the caveators and move the court to set aside the judgment admitting to probate the alleged will of said decedent, and to dismiss the petition praying therefor, notwithstanding the verdict of the jury, and for cause therefor say that it appears by the deposition of the witness Stevenson, adduced by the caveatees, that on the same day of the execution of the alleged will, but prior thereto, the said decedent signed, acknowledged, sealed, and delivered a deed conveying the same property mentioned in said will, and did not die seized and possessed of said property. Wherefore the said alleged will is inoperative, null, void, and incapable of transmitting title to said property and ought not to be admitted to probate and record as a will of real estate.

J. H. ADRIAANS,
L. A. BAILEY,
Attorneys for Caveators.

14 (Endorsement: Motion to deny probate of will notwithstanding verdict of jury and to vacate judgment. Filed Mar. 17, 1900.)

In the Supreme Court of the District of Columbia, Holding a Special Term for Orphans' Court Business.

In re Estate of EZRA W. LEACH. No. 7571, Ad. Docket 23.

This cause coming on to be further heard upon the caveators' motion to set aside the order probating the will herein, to deny probate thereof, and to dismiss the petition praying therefor notwithstanding the verdict of the jury, it is, upon consideration thereof, by the court, this 24th day of March, 1900, ordered that the said motion be, and the same hereby is, overruled; and the caveators praying an appeal to the Court of Appeals from the order admitting said will to probate and record, the said appeal is hereby allowed and the penalty of the bond for the appeal is hereby fixed at one hundred (100) dollars.

CHAS. C. COLE, *J.*

(Endorsement: Order overruling motion to vacate probate of will, allowing appeal, and fixing bond at $100. Filed Mar. 24, 1900.)

In the Supreme Court of the District of Columbia, Holding a Special Term for Orphans' Court Business.

In re Estate of EZRA W. LEACH. No. 7571, Ad. D. —.

Upon application of the caveators, it is, this 2nd day of April, 1900, ordered that the term be extended in this cause for ten days from this date for the purpose of settling a bill of exceptions.

CHAS. C. COLE,
Asso. Justice.

(Endorsement: Order extending term to settle bill of exceptions. Filed Apr. 2, 1900.)

In the Supreme Court of the District of Columbia, Special Term for Orphans' Court Business.

GUSTAVUS LEACH ET AL.
vs.
CHARLES R. BURR, Executor, and SAMUEL H. Lucas. } No. 7571, Ad. 23.

Bill of Exceptions.

On the 26th day of February, 1900, the court being engaged in the trial of another cause, the trial of said issues was postponed until March 5th, 1900. On the 5th and 6th days of March, 1900, a jury was sworn to try said issues. Upon motion in that behalf

made, the court ordered, without objection, that in the align-
15 ment the caveators, as heirs of decedent, should be plaintiffs, and the caveatees, as devisees, defendants. Thereupon the caveators called to the witness stand one LYMAN B. CUTLER, who testified that he knew decedent prior to 1885; that decedent and Lucas, the beneficiary of the will, lived in one house, no one else living there; that Leach was white and Lucas colored. Witness was about to express an opinion as to decedent and state facts based upon intercourse with him at that time, when the court excluded the testimony because too remote and directed witness to retire until or unless evidence as to a later period was first introduced.

Upon the same ground the testimony of one Joseph S. Tucker, who testified that he knew decedent in the Washington navy yard about 1884, was excluded under a similar ruling.

Caveators thereupon read from depositions taken in Boston (in law 40978, between the same parties, permitted to be read herein by stipulation) under a commission duly issued from this court, the deposition of one WARREN W. RAWSON, who testified substantially as follows: That decedent visited him in July, 1895, at 34 South Market street, Boston, Mass., on the subject of obtaining information relative to building a green-house, and perticularly as to the use of electricity in that connection; that witness explained to decedent that he found that the growth of plants was accelerated by the use of electric light; that decedent had an impression that the electricity was used for heating purposes, and that decedent throughout the conversation indicated that he thought witness was deceiving him as to the application of electricity. Decedent said (p. 3, Dep.) "that he did not run his houses himself; that he had a colored man that run them for him." I don't remember how long he said he had been in business, but he wanted to get what information he could to assist the colored man.

"Q. How long did he stay with you at that time? A. From half to three-quarters of an hour.

"Q. During that time how long were you in conversation with him? A. Nearly all of it. I was with him all the time showing him around and he asking me questions.

"Q. Did you ever know him after that? —. No, sir.

"Q. During the time that you knew him did you form any opinion as to the mental condition of the man? A. I did.

"Q. Will you please state what it was? A. I thought he was a very peculiar man.

"Q. Please state upon what facts you base that conclusion. A. He asked me peculiar questions and still would repeat questions that he had formerly asked—asked me them again; and why I state this is because I remarked it to my wife as soon as he went away.

"Q. Are you in any manner interested in the estate of said Ezra W. Leach? A. No, sir.

"Q. If there is anything further that you observed upon which

you based your opinion, will you please state it? A. No, sir; I do not know of anything special. P. 4. * * *

16 "Q. Can you recall any of Mr. Leach's questions which seemed to you peculiar? A. Well, no, sir; not exactly; only he used to repeat. Had this electric heating in his mind so much he used to repeat his questions; used to ask me over two or three times; that is all. I could not repeat them word for word; only I know the subject he was on; that is all. 5. * * *

"Q. Did it seem strange to you that a man who was in the flower business and had not used electricity in that connection should ask you questions concerning electricity that portrayed ignorance? A. It did not in one respect, only he acted peculiar about it.

"Q. Now, tell us in what respect he acted peculiar? A. Well, in repeating himself—not to remember—that is all. That case is like hundreds of others that come to see me in relation to facts of that kind, and he is only one of hundreds that come there." 6.

Witness, on being asked to state any facts showing Leach's peculiarities, stated that he could bring none to mind. 7.

"Q. How many times, if more than once, did he question you in regard to heating by electricity? A. Three or four times, sure, if not more." 8.

The witness RAWSON further testified that the testator appeared to believe that witness had some trade secret in relation to the effect of electric heating upon the growth of flowers, as many other persons did, and that the questions which were repeated were in relation to that subject.

One GEORGE E. FAIRBANKS also testified as follows:

(P. 10, Dep.): "That he knew Ezra W. Leach from 1850 to 1862 by working in the same shop with him; knew him thereafter when he enlisted in the army and went to the Watertown arsenal, and thereafter when he kept a drug store in Brighton; that witness visited Leach in Washington during the Grand Army encampment, and again saw Leach during the latter's visit to Boston in 1895; that Leach's mother was insane."

(P. 11, Dep.): "Q. State any fact within your knowledge as to the mental condition of Ezra W. Leach during his lifetime, and especially about the time of his death, December 21st, 1896." (P. 15, Dep.): "A. From the first time I knew—and all through he was always with eccentric ways about him. Q. State more particularly what they were. A. Well, he was pretty set in his disposition against anything that did not just exactly suit. I have known him—we used to attend the same church together, and there used to be a man come in and kind of talk that didn't belong to any church, and Ezra got right up in meeting and told him to sit down. Another time that they—the parson of the church and he—got into a little difficulty, and he got then a little considerable excited about it and displayed a great deal of eccentricity at that time; made considerable talk around the neighborhood" * * * (P. 17, Dep.)

In relation to the foregoing incident, the witness Fairbanks was interrogated and answered as follows:

17 "Q. State more particularly his appearance at this time, so far as you can. A. Well, I could not say exactly, only he acted like a man kind of excited. Q. When was this incident? A. That was just previous to the breaking out of the war. Somewhere about 1860, I suppose. P. 16. * * * Q. State any fact nearer to the time of his death than these you have just mentioned, if you have knowledge of any such facts. A. I cannot recall any. 17. * * * Q. He spoke of depositing some money he had to take care of the cemetery lot? A. Yes, sir; he spoke of that when he was on to the Christian Ende-vorers. Q. You did not doubt his ability to do that if he wanted to? A. No, sir; he could if he wanted to. Q. You saw no lack of mental ability to do it if he wanted to? A. Not then. Q. Did you ever at any time? A. Well, not really; as I say, he was a little eccentric occasionally at times. 21. * * * Q. You had no doubt that Mr. Leach had sufficient mental and business ability to make the contract? A. Yes, sir. Q. You never doubted that, did you? A. No."

In reference to the incident testified to by him, at which the testator told a man at a meeting of the church to sit down, the witness further testified that the man in question was one who ridiculed everything of a religious nature, and who was coming to the meeting in question and inducing a gang of young men to come, pretending to be interested, but really for the purpose of making sport.

"Q. You have testified that you have visited Mr. Leach at his house in the District of Columbia about four years ago. Will you state particularly what occurred while you were there, and especially as to the relation he sustained to the boy Lucas, named in his will as beneficiary. A. I don't know as I can recall any; they seemed to be very pleasantly together; I used to see them around the place around the green-house. Q. Saw whom? A. Mr. Leach and Mr. Lucas. Q. What was his mode of life there? A. Well, Mr. Leach used to do most of the cooking; I should call it a very simple and plain mode of living. Q. What did Mr. Lucas do? A. Mr. Leach told me that Lucas used to go into the market with cut flowers a couple of times a week, I think he said. * * * (P. 20, Dep.) Q. State whether you are in any manner related to the testator or interested in his estate. A. No, sir; not at all."

WILLIAM FRANCIS LEACH testified that he is a cousin of decedent. * * * (P. 47, Dep.) "Q. How did he (Leach) say he (Lucas) happened to come to live with him? A. I can tell the story as he told it? Q. Yes. A. He said the boy come to him, and he was hungry, and he gave him something to eat, and he said that there was a large family and said to him, 'Why don't you come over and live with me?' The boy came and lived with him ever afterward."

One LOIS C. CUSHING also testified substantially as follows (p. 56, Dep.): That witness was 76 years old on the 6th day of June,
18 1897; that she knew Ezra W. Leach from her earliest recollection; was related to him on his mother's side, but is not interested in his estate * * * (p. 57, Dep.); saw Mr. Leach last during the Christian Endeavor meeting in Boston, in 1895. He then stayed two weeks with witness. * * * (P. 58, Dep.)

The witness was further interrogated, and answered as follows:

"Q. During the time that you have known him will you state any facts within your knowledge that will tend to throw light upon his mental condition? A. No; I never saw any change in him. He always was just the same from the time he was born until he died. Q. Whether or not you ever observed anything about him other than normal, so far as his mental condition was concerned? A. No. Q. You never did? A. No. 57–'8. * * * Q. What was her (Leach's mother) mental condition during her life? A. She was partially deranged. Q. For how long a time? A. Well, I do not know that. I remember when she wasn't. It was sort of what the doctors would call nervous prostration. Q. State whether or not it affected her mind, so far as you observed. State facts—that is, I do not want opinion. A. Well, she was nervous. She was never violent at any time, but a sort of a nervous restlessness. She was sane. She was so she could go visiting friends—go out at different times. She was not right. There was something about her—still nothing violent like an insane person. 58. Q. It was not inherited? A. Oh, no. Q. Before Ezra W. Leach died and this question about his property arose, did you ever hear anybody question his mental condition? A. Oh, not at all. Q. That has all grown up since this suit begun, hasn't it? A. Oh, I never heard any question of his mental condition. I never seen any change in him from the time I was born until he died. I used to see a great deal of him. * * * Q. Mrs. Cushing, what do you mean when you say Ezra Leach was as firm as a rock? A. Well, he never was offended, whatever was said to him. He never would take any offense at it. I never saw him in ill temper or anything of that kind. Q. He was set on standing to his own opinions? A. Yes; he would stand to his own opinions. Q. Not easily influenced? A. Yes. Q. Not easily influenced? A. Oh, no; he was very firm."

"Mr. Leach's mother was partially deranged, but not violent." * * * (P. 61, Dep.) "Did he have any conversation about his home in Washington? A. None. Q. Did he say with whom he lived in the house there? A. He spoke of his home, and said he was living there with that boy; they kept house together; said he took care of himself, and when he wanted his meals he got them, and when Sam. wanted his he got his, and then he would take his paper and go out and read; then Sam. would come home from market; and I says, 'Well, being interested in the flower business, Ezra, how much does that green-house pay you?' He says, 'I know nothing about it. I don't know nothing about it. I don't know whether Sam. gets one dollar or fifty.' I says,

'Why, do you let him do that way?' He says, 'Yes.' I says,
19 'Don't he give any account of what he sells?' He says,
'No.'" * * * (p. 62, Dep.) "Q. Did he have any conversation in regard to leaving his property to colored people? If so, state when and what it was. A. I said to him one day—said I, 'Now, Ezra, I hope you are not going to leave all your property to them negroes.' 'Oh,' he said, 'they are not fit to have money.' He says, 'They will sing and dance all night when they have not got a mouthful for breakfast.' He says, 'They don't know the use of money.' Q. Whether or not he had any conversation with you in regard to the boy Lucas in that particular? A. No; he didn't. He said he was a very smart boy; said that he came there as a little beggar boy; he came there and said he was hungry, and he gave him food, and stayed with him two or three days, and there was a very large family of children, and he said to him, 'Now, Sam., you had better stay here with me,' and he said he stayed right from that with him."

That Lucas was about to get married; that he was to bring his wife to testator's home to live, and that he, the testator, proposed to enlarge his house to accommodate them if necessary.

Thereupon caveators introduced evidence, which was admitted, transcript No. 1315, of record No. 111,295, of the health department, D. C., duly signed and sealed by the acting health officer and register, in the words and figures following:

Transcript No. 1315. Record No. 111,295.

HEALTH DEPARTMENT,
DISTRICT OF COLUMBIA,
WASHINGTON, *December 28th*, 1899.

A Transcript from the Record of Deaths in the District of Columbia.

Name of deceased: Ezra W. Leach.	Date of death: December 21st, 1896.	Age of deceased: 73 yrs. — mos — days.
Color, sex, social condition, and occupation: White, male, single.	Birthplace: Massachusetts.	How long a resident in District of Columbia: 20 yrs. — mos. — days.
Cause of death: Broncho-pneumonia.	Place of death: Hillsdale, D. C.	Duration of last sickness: Eight days.
Place of burial: Arlington National cemetery.	Medical attendant: R. A. Pyles, M. D.	Undertaker: Thos. F. Murray.

A true copy.
[SEAL.] (Signed) H. C. McLEAN,
Act'g Health Officer and Registrar.

Correct.
(Signed) WM. B. MOORE,
Statistician.

Attest:
(Signed) W. C. FOWLER, M. D.,
Act'g Chief Clerk.

20 Thereupon caveators called to the stand successively Drs. Clifton Mayfield, Irving C. Rosse, J. Remsay Nevitt, Frank P. Vale, Charles M. Emmons, William V. Marmion, and A. B. Richardson, who, upon a hypothetical question submitted by caveators, substantially concurred that it was contrary to their experience and reading that a man of the age of 73 years dying of acute pneumonia should have testamentary capacity between three and four hours before death. Upon a hypothetical question embodying the facts testified to by the witness Stephenson, submitted by the caveatees, said experts substantially agreed that the condition of capacity at that time implied in the hypothesis would be rare and exceptional, and[d] some of them maintained it was impossible. Dr. Marmion further testified that he personally made a physical examination of decedent upon an application *of* increase of pension at the instance of the Pension Office, and thus found that decedent suffered from rheumatism, inguinal hernia, cardiac hyper*th*rophy, and senile debility; that pension certificate No. 522,949 was granted to decedent based upon such examination by three physicians employed by the Pension Office, of whom witness was one; that in the opinion of witness the cardiac hyper*th*rophy and senile debility, when combined with acute pneumonia, would so tend to impair the mind as to render it incapable of intelligently acting upon a question of the disposition of property or of making a valid deed or will in the last stage of illness.

Dr. A. B. RICHARDSON testified that the unconsciousness preceding death from acute pneumonia was not characteristic of death from bronchial pneumonia, and that, in his opinion, if the testator himself dictated the terms of the will and himself suggested the legal obstacle to giving the property to the church, as testified by Stevenson, this would show that he was not laboring under mental disability, and that, especially, his initiative action in suggesting the legal difficulty in question and the means of obviating it would tend to show that there was not mental inability to make a valid deed or contract.

Caveators thereupon offered in evidence the paper-writing offered as the will of decedent, which is in words and figures as follows, to wit:

"*Will.*

I, Ezra W. Leach, being of sound mind and memory, make, publish and declare this to be my last will and testament.

I give and bequeath all the real and personal property of every kind and description wheresoever situated that I now possess to Samuel H. Lucas of Hillsdale, D. C.

I hereby name and appoint as executor of this my last will and testament Charles R. Burr of Anacostia, D. C.

Signed, sealed and delivered to my executor Charles R. Burr, in presence of the subscribing witnesses, each of whom sub-

21 scribed his name in the presence of the other this 21st day of December, 1896.

E. W. LEACH.

Witnesses:

H. T. STEVENSON,
40 Grant Street, Anacostia, D. C.

D. FRAZIER,
Howard Avenue, Anacostia, D. C.

R. A. PYLES,
Anacostia, D. C.

A. M. GREEN,
Anacostia, D. C."

Caveators thereupon offered to prove by fifty conveyances from the land records of D. C., produced in open court, to and from the decedent that he uniformly signed his name "Ezra W. Leach" and had conveyances to him made out "Ezra W. Leach." The caveatees in open court conceded the fact, rendering the proof unnecessary. The caveators offered to prove that the pension application was also signed "Ezra W. Leach;" this was also conceded by caveatees, rendering the proof unnecessary. Caveators thereupon read so much of the deposition of one Hugh T. Stevenson, adduced as a witness by the caveatees, as tended to show that on the day of decedent's death a deed was prepared by witness conveying the same real estate mentioned in the will from decedent to the same Lucas mentioned as beneficiary in the will; said testimony is substantially as follows—6, Dep.:

"Pastor, I did not expect to go so early; there are some things which I wanted to perform and have neglected. I wanted to give the church a parsonage. I cannot do it now; it is too late. I will be unable on account of the laws of Maryland, which apply to the District of Columbia, to do anything of that sort, for they will not allow a man to do anything of that sort within thirty days of the time of his death. I want you to prepare the papers and turn everything over to Sam. Q. Who was Sam.? A. Samuel H. Lucas. I said, All right, sir; I will do the very best I can. I then went out and sent a boy, a colored boy, I think, and told him to take—that is my impression—a horse and go and get Dr. Green. Q. Dr. Green was a notary, was he? A. Yes, sir; he was a notary; he was a dentist by profession, but was engaged in the banking business. He is not practicing. I then asked if there was anything in the house in the form of a deed, and after much search I found one in a trunk, I think, in the room in which the Dr. was. I then asked for the ink, and the Dr. ordered Lucas to get me the ink. I went into the kitchen and drew up the document to the best of my ability. I am not an expert in that business, and never drew up a paper of that kind before. In the meanwhile Dr. Green came in and I turned it over to him, and asked him if he had not better read it over, which he did. We then went into the Doctor's room and the Doctor

22 got up. Q. Sat up? A. Yes, sir; he sat up. I think he was aided to sit up by having pillows placed behind him. He

signed it, and in the meanwhile Dr. Pyles came in. Dr. Pyles was his family physician and had come in to see him. Q. Had Mr. Burr arrived at that time? A. Mr. Burr came in later. After I got through it occurred to me that possibly I had made a mistake in preparing the paper, and I suggested to the Doctor that I may not have got everything in there just right, and if he wanted to make sure *he* could make a will if he wished. He then told Dr. Green to draw up a will, and he drew up the will, and while drawing it up he asked me whom he wanted for executor, and I came in and asked Dr. Leach whom he wanted, and he said, 'Charlie;' that is the name he always called Mr. Burr by at every meeting we had. I told Mr. Green, and he came in, and the will was given to me, and I read it over to Dr. Leach, and he said that was right. I read it over slowly, carefully, and distinctly, and after it had been read he said that was right and signed his name, and in doing so noticed that the will read 'Ezra W. Leach,' and he wrote 'E. W. Leach.' 'E. W.' will do, he said, for that is my name. Q. That was after he had signed the will? A. That was while he was signing it, that he noticed that he had written 'E. W.' instead of 'Ezra W.' After that the witnesses signed, and the will was turned over to Mr. Burr, who was appointed the executor." * * * (P. 10, Dep.) "Q. You say he, 'Green,' took an oath. You mean he took an acknowledgment to the deed, don't you? A. Yes, sir; he took an acknowledgment to the deed, but at that time he (Green) did not affix his seal, as he said it was unnecessary, but that he would affix it at his office." * * * (P. 11, Dep.) "Q. What, if anything, did Lucas do in connection with the instruction for the deed or will? A. He was not present; he was not present when any suggestion was made; he was present when Dr. Leach told me to turn everything to him and draw up the papers accordingly; he told Sam. what he would like to have done in reference to the parsonage of the church." * * * (P. 12, Dep.) "Q. So that the writing of these papers was done about 9 o'clock? A. Yes, sir; I should say between nine and ten o'clock. Q. And the deed was drawn up first by you? A. Yes, sir; it was. Q. Now what property was conveyed by the deed? A. Well, he told me to turn everything over. Q. Turn everything over that you knew about, real and personal property? A. I do not know about the personal property. Q. Did you describe any particular property or did you say what real estate? A. I tried to make an exact description. Q. Where is that paper now? A. I have been informed by Mr. Charles Burr, the executor named in the will, that it is in his possession. Q. It was signed and acknowledged, was it? A. Yes, sir; it was. Q. And the only thing, as I understand you, it lacked, was the seal at the time you saw it? A. Yes, sir. Q. That is, the notary did not put his seal on it at that time? A. I cannot say whether he had filled in the acknowledgment of the deed or not. Q. It was signed

23 and acknowledged by Dr. Leach in your presence, was it not? A. Yes, sir; it was. Q. Do you know whether it covered all the real estate owned by Dr. Leach? A. I do not know all the real estate owned by Dr. Leach; I tried to get everything in. Q. Now,

about this parsonage, you say it is the house Mr. Suit lived in, and that Dr. Leach intended to give it for a parsonage? A. That is exactly what he always said" * * * (P. 14, Dep.) "Q. Now, has there been any understanding between you, as pastor of the church subsequent to the death of Dr. Leach, that Lucas was to turn over that property to the church? A. No, sir; no understanding whatever. Q. Has there been any talk with you individually on that subject? A. No, sir; he never made me a promise as pastor of that church nor as an individual. Q. There has been some talk about it, has there not? A. He told the Doctor in my presence that he would carry out his wishes in the matter. Q. Lucas said that? A. Yes, sir; he did. Q. And if the will is sustained, you do expect him to turn the lot to the church, do you not? A. Why that is for him to say; I have got nothing to do with it. If I was in his position I would certainly do it. Q. Did you not just say that Lucas was not present when the will was drawn? A. I did, sir. Q. Well, how could Lucas know that Dr. Leach wanted the house to go as a parsonage of the church? A. This was in reference to the deed; he was present when the Doctor told me to draw up the deed, and he turned to Sam. and told him what he would have done; that was part of the conversation. Q. And it was the understanding, in so far as the Doctor was concerned, that the lot was to be turned over to the church? A. Yes, sir—that is, when the deed was drawn. Q. How about the will? A. Nothing was said. Q. What became of Lucas after the deed was drawn? A. Lucas went out into the kitchen before the deed was drawn, and never returned to the room until after the will was made and signed. Q. He was in the house? A. Yes, sir; he was." * * * (P. 17, Dep.) "Q. Now, between the time of the writing of the deed by you and the writing of the will, Mr. Burr had come in? A. Yes, sir; he had. Q. He was not there when the deed was acknowledged, was he? A. I am not certain about that; he was not there when Dr. Leach gave me the instructions. I had sent for Dr. Green, and Mr. Burr had been sent for by his wife. Q. About what time was there between the time of the preparation of the deed and the preparation of the will? A. Very little, sir. Q. All done within an hour, was it? A. Yes, sir. Q. As far as your recollection now serves you, was the description of the property any more accurate than that (handing witness the will)? A. What do you mean by any more accurate? Q. Did it describe the property differently? A. Yes, sir. Q. In what respect? A. I could not say; only that I tried to describe the property; that I know I had a deed, and my impression is that I included in it a clause that would cover everything; but I have not seen that paper from that day to this. Q. Did you try to describe by the number of the lots? A. I think in some cases where I found in
24 searching with Lucas a deed, I think I tried to utilize that—I cannot say as to the exact wording of that paper." * * * (P. 19, Dep.) "Q. You have said something about Lucas and yourself in searching for papers. Now, at whose instance was that? A. It was at my instance. I wanted something to draw up the deed by; I wanted something to guide me. Q. Did you ask Dr. Leach

whether he had any deeds or not? A. I asked Lucas where the papers were, and he said he could not tell exactly. Q. Where did Lucas live? A. In the same house with Dr. Leach. Q. How long had he lived there? A. Ever since I had known Dr. Leach. Q. That is about the middle of August, 1893, down to December, 1896? A. Yes, sir; I applied to him because he was an inmate there. Q. Who else lived there? A. He was the only one I knew of." * * * (P. 20, Dep.) "Q. Now, Mr. Stevenson, will you give me as nearly as you can the conversation between Dr. Leach and Lucas at which Lucas said he would carry out the Doctor's wishes? A. As I can recall it, it seems to me that Doctor said this: 'I wanted that house by Kenner's to be given t- the church for a parsonage. I cannot do it now. I would like to have you do it, Sam;' that was after he had already told me to draw up the paper. Q. What did Lucas say? —. Lucas said, 'Of course, Doctor, I will try and carry out your wishes.' Q. Did the Doctor tell him that he gave him in trust or on condition that he should give the property adjoining the Kenner property to the church? A. No, sir; he had already given me the directions for drawing up the deed before he said that."

HUGH T. STEPHENSON further testifies that at the time the will in controversy was made he was pastor of the Anacostia Baptist church, whose church Leach attended; that he was a witness to the will; was present at its execution; saw the other witnesses sign, and that the testator was of sound mind and capable of making a valid deed or contract at that time. He also testified that the testator, during all the time of his acquaintance with him, had been his chief adviser and counsellor in all church matters, having been one of the deacons of the church, a member of the board of trustees, a member of the finance committee, treasurer of the board of deacons, and held other offices during that time (from the middle of August, 1893, to the time of his death); that up to the time of his death he was a member of the executive committee of the Baptist denomination in the District of Columbia; that he was a man of excellent ability, considerable intelligence, and well competent to transact any business up to the very end of his life, and that witness observed no change in his business capacity, memory, and ability up to the time of his death, and that he died between twelve and one o'clock p. m. on the day the will was executed, December 21, 1896.

After reading the foregoing depositions the caveators announced to the court that they rested their case in chief.

Thereupon the counsel for the caveatees moved the court
25 to instruct the jury to find a verdict maintaining the will, inasmuch as the caveators had adduced no testimony entitling them to go to the jury. The court thereupon, notwithstanding the objection of the caveators, sustained the caveatees' motion and directed the jury to answer the first issue affirmatively and the other two issues negatively; to the granting of which motion the caveators objected then and there; but the court overruled said objection and granted the motion, and instructed the jury as prayed

in said motion; to the granting of which motion and to which instruction the caveators then and there noted an exception. The jury accordingly brought in a verdict as directed without leaving the box, and the caveators noted an exception in open court to the verdict and prayed the court to sign and seal this their bill of exceptions and make the same a part of the record in said cause, which is accordingly done, now for then, this 9th day of April, 1900.

[SEAL.] CHAS. C. COLE,
Asso. Justice.

(Endorsement: Bill of exceptions. Filed Apr. 9, 1900.)

In the Supreme Court of the District of Columbia, Holding a Special Term for Orphans' Court Business.

In re Estate of EZRA W. LEACH, Dec'd. No. 7571.

Now come the caveators and move the court to pass an order herein making the costs of the appeal allowed herein a charge upon the estate and payable from the assets thereof.

J. H. ADRIAANS,
Att'y for Caveators.

To J. J. Darlington, Esq., att'y for caveatees:

Take notice hereby that on Friday, the 13th day of April, 1900, at 1 o'clock p. m., I will present above motion to Mr. Justice Cole for action.

J. H. ADRIAANS,
Att'y for Caveators.

Service acknowledged this 10th day of April, A. D. 1900.
J. J. DARLINGTON,
Att'y for Caveatees.

(Endorsement: Motion to make costs of appeal a charge upon assets of above estate. Filed Apr. 10, 1900.)

26 In the Supreme Court of the District of Columbia, Special Term for Orphans' Court Business.

In the Matter of the Will of EZRA W. LEACH. No. 7571, Admr. Doc.

This cause coming on upon the motion of the caveators for an order making the costs of their appeal a charge upon the estate and payable from the assets thereof, it is by the court, this 23d day of April, A. D. 1900, upon consideration thereof, and after argument by the counsel for the caveators, ordered that the said motion be, and the same hereby is, denied.

CHAS. C. COLE, *J.*

(Endorsement: Order denying motion to make costs of appeal charge upon estate. Filed Apr. 23, 1900.)

In the Supreme Court of the District of Columbia, Holding a Special Term for Orphans' Court Business.

In re Estate of EZRA W. LEACH. No. 7571.

The register of wills will please prepare a transcript of the part of the record in the above-entitled cause hereinafter designated for transmission to the Court of Appeals D. C. as the basis of an appeal allowed herein:

Petition praying probate, filed July 5, 1899.
Caveat, filed August 30, 1899.
Answer to caveat, filed October 19, 1899.
Order framing issues, filed November 3, 1899.
Motion, filed November 7, 1899, and order passed thereon.
Motion, filed November 24, 1899, and order passed thereon.
Motion, December 27, 1899.
Motion of December 29, 1899.
Order of December 30, 1899, changing date of trial.
Order of publication, filed January 26, 1900.
Motion, filed February 21, 1900.
Proof of publication, filed March 1, 1900.
Stipulation of counsel, filed March 1, 1900.
Order making parties—Proceedings, 29, folio 448.
Order directing jury to sustain will—Proceedings, 29, folio 449.
Motion for new trial, filed March 8, 1900.
Order admitting will to probate, filed March 17, 1900.
Motion, filed March 17, 1900.
Order allowing appeal, filed March 24, 1900.
Order extending term, filed April 2, 1900.
Bill of exceptions, filed April 9, 1900.
Motion of April 10, 1900.
Order of April 23, 1900.
Order extending time to file transcript.

J. H. ADRIAANS,
Att'y for Caveators.
J. J. DARLINGTON,
Att'y for Caveatees.

27 (Endorsement: Agreement for transcript of record. Filed Apr. 23, 1900.)

In the Supreme Court of the District of Columbia, Holding a Special Term for Orphans' Court Business.

In re Estate of EZRA W. LEACH. No. 7571.

Upon application of the caveators, the caveatees consenting thereto, the time for filing the transcript of the record herein in the Court of Appeals is hereby, this 2d day of May, 1900, extended for fifteen days from the expiration of the time limited by the rules of said court, this order being passed upon the undertaking of the caveators that the record shall be printed and the cause made ready

for hearing in the Court of Appeals by the first Tuesday in June, 1900.

CHAS. C. COLE, *Justice.*

(Endorsement: Order extending time to file transcript for 15 days. Filed May 2, 1900.)

In the Supreme Court of the District of Columbia, Special Term for Orphans' Court Business.

DISTRICT OF COLUMBIA, *To wit:*

I, Louis A. Dent, register of wills for the District of Columbia and *ex officio* clerk of the said special term for orphans' court business, do hereby certify the foregoing to be a true copy of the original will of Ezra W. Leach, deceased, filed in the office of the register of wills for the District of Columbia aforesaid; also true copies of certain other papers and minutes on file in the office of the register of wills in case No. 7571, estate of Ezra W. Leach, deceased, the same constituting a full, true, and correct transcript of record of proceedings had in said cause, numbering from page ½ to page 52, inclusive.

In testimony whereof I hereunto subscribe my name and affix the seal of the said supreme court, special term for orphans' court business, this 8th day of May, anno Domini 1900.

[Seal Supreme Court of the District of Columbia, Probate Jurisdiction.]

LOUIS A. DENT,
Register of Wills D. C. and ex Officio Clerk of the Special Term for Orphans' Court Business.

[Ten-cent U. S. internal-revenue stamp, canceled May 23, 1900. L. A. D.]

28 In the Court of Appeals of the District of Columbia.

GUSTAVUS LEACH ET AL., Appellants,
vs.
CHARLES R. BURR, Executor, and SAMUEL H. LUCAS, Appellees. } No. 997.

It is hereby stipulated and agreed by and between Joseph J. Darlington, attorney for appellees, and John H. Adriaans, attorney for appellants, that the following portions of the transcript of the record certified by the register of wills shall be printed and constitute the record for determination by the Court of Appeals:

Pages 1 and 2, including names erased and without erasure marks, excluding the certificate on page 2.

Pages 3 to 27, both inclusive, without erasures and with substitutions, omitting page 13.

Omit erased portions on pages 28, 29, 30, except second sentence erased on page 30, and print that as though not erased.

Pages 31 to 38, inclusive. omit bracket and parentheses marks.

Page 39, omit erasures and bracket and parentheses marks.

Pages 40 to 44, inclusive.

Pages 45, 46, 47, omit erased portions.
Pages 48 to 52, inclusive.
Certificate of register of wills.

J. J. DARLINGTON,
Per R. B. B.,
Att'y for Appellees.
J. H. ADRIAANS,
Att'y for Appellants.

May 22, 1900.

(Endorsed:) Court of Appeals D. C., April term, 1900. No. 997. Gustavus Leach *et al.*, appellants, *vs.* Charles R. Burr, executor, and Samuel H. Lucas. Stipulation of counsel as to printing record. Court of Appeals, District of Columbia. Filed Jun- 2, 1900. Robert Willett, clerk.

Endorsed on cover: District of Columbia supreme court. No. 997. Gustavus Leach *et al.*, appellants, *vs.* Charles R. Burr, executor, *et al.* Court of Appeals, District of Columbia. Filed Jun- 2, 1900. Robert Willett, clerk.

29 WEDNESDAY, *October 10th, A. D.* 1900.

GUSTAVUS LEACH, WILLIAM F. LEACH, CHESTER H. SHAW, George L. Shaw, Howland L. Hunt, Francis H. Hunt, Alice O. McNeil, William W. Hunt, Emma G. McNeil, Edward E. Hunt, Judson Hunt, Howland N. Hunt, Arthur A. Hunt, Cyrus P. Reed, and Gustavus L. Reed, Appellants,
vs.
CHARLES R. BURR, Executor, and SAMUEL H. LUCAS. } No. 997.

The argument in the above-entitled cause was commenced by Mr. W. D. Davidge, Jr., attorney for the appellants, and was continued by Messrs. Rudolph B. Behrend and J. J. Darlington, attorneys for the appellees, and was concluded by Mr. W. D. Davidge, attorney for the appellants.

30 GUSTAVUS LEACH, WILLIAM F. LEACH, CHESTER H. Shaw, George L. Shaw, Howland L. Hunt, Francis H. Hunt, Alice O. McNeil, William W. Hunt, Emma G. McNeil, Edward E. Hunt, Judson Hunt, Howland N. Hunt, Arthur A. Hunt, Cyrus P. Reed, and Gustavus L. Reed, Appellants,
vs.
CHARLES R. BURR, Executor, and SAMUEL H. LUCAS. } No. 997.

Opinion.

Mr. Justice MORRIS delivered the opinion of the court:

This is an appeal from the supreme court of the District in a proceeding instituted in that court under the provisions of the act of Congress of June 8, 1898, entitled "An act conferring on the su-

preme court of the District of Columbia jurisdiction to take proof of the execution of wills affecting real estate, and for other purposes."

Prior to that act, the supreme court of the District holding a special term for orphans' court business and its predecessor in that regard, the former orphans' court of the District, had jurisdiction to take the probate of wills only in so far as they affected personal property, and to superintend the administration of such property. There was no authority in either to take the probate of wills so as to affect real estate.

This was left to the ordinary courts of general jurisdiction as occasion might arise, in suits of ejectment or otherwise, for the enforcement of such wills. In response to a general demand of the community for a change in this regard, the act of June 8, 1898, operated a radical alteration in the law. This act, among others, contained the following provisions, which are invoked as affecting the present controversy:

"SEC. 2. That, in addition to the jurisdiction conferred in the preceding section of this act, plenary jurisdiction is hereby given to the said court (the supreme court of the District), holding the said special term, to hear and determine all questions relating to the execution and to the validity of any and all wills devising any real estate within the District of Columbia, and of any and all wills and testaments properly presented for probate therein, and to admit the same to probate and record in said special term; and neither the execution nor the validity of any such will or testament so admitted to probate and record shall be impeached or examined collaterally, but the same shall be in all respects and as to all persons *res judicata*, subject, nevertheless, to the provisions hereinafter contained,

"SEC. 3. That all issues of fact hereafter arising in the supreme court of the District of Columbia holding a special term for orphans' court business, including those relating to the execution or the validity of any will or testament, shall hereafter be tried before said justice holding said special term, and when required for such purpose jurors shall be drawn in the manner now by law provided for the drawing of jurors for service at the special term of the supreme court of the District of Columbia sitting as a circuit court for said District.

"SEC. 4. That no will or testament shall be hereafter admitted to probate and record in the said District until the following procedure shall have been followed:

"Whenever any will or testament shall be presented for probate and record to the said justice, he shall direct all of the heirs-at-law or next of kin of the testator, or both, as the case may require, to be summoned to appear before him at a certain day, not earlier than ten days from the date of said presentation. If said summons shall be returned personally served upon all of said heirs-at-law or next of kin, or both, at least five days before said return day, then, if no caveat be filed to said will, the said justice may forthwith admit the same to probate and record. But if any of said

heirs-at-law or next of kin be returned 'not to be found,' then the said justice shall cause not less than thirty days' notice of the application for such probate to be published in some newspaper of general circulation in the District of Columbia, and may order such other publication as the case may require. And upon such notified day, or such subsequent day as the court shall appoint, the said application for probate shall be heard, due proof of such publication being made; and if no caveat be filed, the said will or testament shall be admitted to probate and record. In all cases in which all of the heirs-at-law or next of kin of a testator, or both, consent to such probate and record, such will and testament shall thereupon be forthwith admitted to probate and record without the
31 hereinbefore-described proceedings. In all cases in which any of said heirs-at-law or next of kin is an infant or of unsound mind, the said justice shall appoint a guardian *ad litem* for said infant or person of unsound mind: Provided, that in no case shall any will or testament be admitted to probate and record save upon formal proof of its proper execution.

"SEC. 6. That whenever any caveat shall be filed, issues shall be framed under the direction of the court for trial by jury: Provided, that in all cases in which all persons interested are *sui juris* and are before the court, the issues may be tried and determined by the court without a jury upon the written consent of all such parties. At least ten days prior to the time of trial all of the heirs-at-law or next of kin of the decedent, or both together, with all persons claiming under the will, shall be each served with a copy of said issues and a notification of the time and place of the trial thereof. * * * If, as to any party in interest, the notification shall be returned 'not to be found,' the court shall assign a new day for such trial, and shall order publication at least twice a week for a period of not less than four weeks of a copy of the issues and notification of trial in some newspaper of general circulation in the District of Columbia, and may order such other publication as the case may require. And the supreme court of the District of Columbia may from time to time prescribe and revise rules and regulations for service personally upon such party outside of the District of Columbia of a copy of such issues and notification, but personal service upon absent defendants shall in no case be essential to the jurisdiction of the court in the premises. Upon the day notified, or such subsequent day as the court shall appoint, the court shall proceed with the trial of said issues, due proof of such publication, and, when required, of such personal service being made, and due opportunity being given to any party in interest to demand other and further issues. On the trial of any such issue exceptions may be taken to the rulings of the court, which shall be embodied in a bill of exceptions, to be settled and signed by the justice presiding within such time as may be fixed by the rules of practice prescribed from time to time by the supreme court of the District of Columbia in general term, and the said justice shall have the same power to set aside the verdict and grant a new trial that is possessed and exercised by the supreme court of the District of Columbia in cases tried with a jury accord-

ing to the course of the common law, and as to such trials shall have all other powers now vested by law in the supreme court of the District of Columbia holding a special term as a circuit court. In all cases in which such issues shall be tried the verdict of the jury and the judgment of the court thereon shall, subject to proceeding in error and to such revision as the common law provides, be *res judicata* as to all persons, nor shall the validity of any such judgment be impeached or examined collaterally."

"SEC. 8. That the foregoing sections of this act shall apply only to wills and testaments hereafter offered for probate, and, in cases of intestacy, to the estates of such persons as shall die after the passage of this act: Provided, that in the supreme court of the District of Columbia holding a term for orphans' court business any person interested under any will heretofore filed in said court may offer the same for probate as a will of real estate, whereupon such proceedings shall be had as by this act are authorized in regard to wills hereafter offered for probate.

"SEC. 10. * * * That the provisions of this section shall not apply to any proceedings at law or in equity pending at the date of the passage of this act, or commenced within one year after the passage of this act, wherein or whereby the validity of such will or codicil is or shall be called in question."

With this act in force, the appellee, Charles R. Burr, on July 5, 1899, being the executor named in a paper-writing purporting to be the last will and testament of one Ezra W. Leach, filed a petition in the supreme court of the District holding a special term for orphans' court business, for the purpose of the probate of that will as a will of real estate, the same, it seems, having, previously to the passage of the act, been probated and admitted to record in that court, after contest by some of the next of kin, as a valid will of personalty. Notice of the application for the new probate was duly given in accordance with the provisions of the act of 1898 to the heirs-at-law of the deceased; and these appeared by attorney, and made answer to the petition. The substance of the answer was a denial of the testamentary capacity of the deceased, duress exercised over the testator by the beneficiary under the will, one Samuel H. Lucas, and an allegation that the testator did not at the time of the execution of the will own the property sought to be transmitted thereby, having previously, as it was alleged, made a deed of conveyance thereof, and that the alleged will was not the will of the deceased. And the answer was interposed as a caveat to the will.

Reply was made by the appellees to the caveat, alleging the validity of the will; and thereupon issues were framed by the court. These issues, three in number, were as follows: (1) Whether at the time of the execution of the alleged will, which was December 21, 1896, a few hours before the death of the testator, he was of sound mind, capable of executing a valid deed or contract; (2) whether the paper-writing in question had been procured from him by threats, menaces, or duress exercised over him by Lucas or any other person; and, (3) whether such paper-writing had been procured by fraud on the part of Lucas or any other person.

Soon afterwards a motion was made on behalf of the heirs-at-law to vacate the order approving these issues, on the ground, as alleged, that the act of Congress did not apply to wills offered for probate prior to the date of its passage; but it does not appear that any action of the court was taken, or sought to be taken, upon the motion. Then a motion was interposed on behalf of the same parties for the allowance of a further issue, whether the paper-writing in question was "a valid operative instrument." On this motion likewise the record before us shows no action taken. And why these motions should have been introduced into this record, where they are a mere incumbrance, is not apparent.

32 The issues were set for trial; but, on the motion of the attorney for the caveators, the time therefor was enlarged, and a new day was set for the purpose, with a proviso in the order, that, inasmuch as some of the heirs-at-law, who were named, had been returned "not to be found," the order and a copy of the issues should be published twice a week for four weeks in the Evening Star newspaper. The order was made on January 26, 1900; and the required publication was made on January 26; January 30, and February 2, 6, 9, 13, 16, and 20, 1900—the first advertisement being in the same week and on the same day on which the order was made, two advertisements in each one of the three following weeks, and the last one in the week thereafter.

The trial was finally had on March 5 and 6, 1900. At the beginning of it, the caveators, who had been served with process, or who had appeared in the cause, were by order of court made plaintiffs, and the executor Burr and Samuel H. Lucas were made defendants; and thus they went to trial. The only testimony offered was that adduced on behalf of the caveators. At its conclusion the counsel for the caveatees moved the court to instruct the jury to render a verdict in favor of the caveatees on all the issues, on the ground that the caveators had adduced no testimony which entitled them to go to the jury; and this motion the court allowed, and directed a verdict accordingly. Exception to this ruling was taken by the caveators. After motion for a new trial overruled, judgment was rendered upon the verdict, and the will was admitted to probate and record as a valid will of real estate. From this order the present appeal has been taken on behalf of the caveators.

Two briefs have been filed in this cause on behalf of the appellants, the first one by the attorney who conducted the cause in the court below and took the appeal, but who has been prevented from appearing in this court; and the second by other counsel. Some apparent confusion is introduced into the case by the fact that the assignments of error in these two briefs are different, the former containing sixteen, the latter only four assignments. But while the latter brief is designated as "supplemental," the four assignments contained in it sufficiently state all the questions in the case that can be regarded as substantial, and we may therefore disregard the assignments contained in the original brief.

The four assignments of error for our consideration are: 1st. That the court below was without authority or jurisdiction to admit

the will in question to probate, for the reason, as alleged, that the procedure prescribed by the act of Congress of 1898 had not been followed; 2d. That the publication against absent parties was not in accordance with the order of the court, or the provisions of the act; 3d. That it was error to direct the jury to render a verdict for the caveatees; 4th. That there was nothing upon which the alleged will could operate, inasmuch, as it is alleged, the testator had previously disposed of the same property by deed.

The first and second of these assignments may be considered together, since they have reference to the same subject-matter, that of the procedure prescribed by the act of Congress of 1898. And in this connection it may be stated that a large part of the argument of counsel on the point is, in our opinion, irrelevant, inasmuch as it is based on the theory that the record should show some things, which it is claimed that it does not show, when confessedly the whole record is not before us, but only certain specified parts of it, and in fact the original papers from the court below, not included in the transcript before us, have been produced in the argument of the cause to show that these very things had been done. The appellants have brought the record here; and, if they would show that jurisdiction was wanting in the court below, by reason of the absence of some essential part of the prescribed procedure, it was their duty to bring such a complete record here as would plainly show the fact.

The only question that is deserving of consideration in this connection is, whether, after the issues between the parties had been formulated under the order of the court, there was sufficient publication of that order and of the time assigned for the trial, in accordance with the requirements of the act of Congress; and this question is properly raised, since the record before us shows precisely what was done.

The order of the court, approving the issues and directing notice to absent parties by way of publication, was made on Friday, January 26, 1900. On the same day, in the afternoon, the advertisement was inserted in the Evening Star newspaper; and it was repeated on Tuesday and Friday of the following week, and on Tuesday and Friday of each of the two following weeks, and on Tuesday of the fourth week thereafter. The order required publication "twice a week for four weeks," and the act of Congress required publication "at least twice a week for a period of not less than four weeks." The question is, whether the publication actually made was in compliance with these requirements; and this again depends upon the question whether the act of Congress and the order of the court by the term week intended the conventional week of seven days, beginning on Sunday and ending on Saturday, or a period merely of seven consecutive days without reference to any special commencement or conclusion. If the latter was meant, then the publication in the present case was undoubtedly sufficient; but if the term was intended to be taken in the former sense, the publication was insufficient.

But we are of opinion that the word week in this act of Con-

gress was not intended to mean the conventional week beginning with Sunday and ending with Saturday, but a period of seven consecutive days. The word is used in both senses, but the primary sense is that of a period of seven consecutive days. So it is given by Webster's Dictionary, and by all the law dictionaries. Only in a secondary sense is the term applied to mean the specific period of time beginning with Sunday and ending with Saturday. Undoubtedly the generic and not the specific meaning is to be taken, unless the contrary is expressly stated, or necessarily implied in the context in which the word is used; and we find nothing in the act of Congress of 1898 to show that the conventional week was in-
33 tended. On the contrary, the plain import of that act is that the word is to be taken in its primary, and not in its conventional sense. For it requires the publication to be not for four weeks, or for any number of weeks, but for a period of time not less than four weeks. The period of time is to be measured by weeks, evidently without reference of any kind to the conventional week.

In support of their contention, however, the appellants cite the case of Ronkendorff *vs.* Taylor, 4 Pet. 349, 361. There the question was as to the legality and sufficiency of a notice given by a collector of taxes of an intended sale of property for non-payment of taxes. The law in force at the time required such notice to be given by advertisement in a newspaper once a week for three months. The collector gave the required notice for the specified length of time; but the advertisement, although inserted once in each conventional week, was not inserted always on the same day of the week, so that sometimes there was an interval of eleven days between the successive publications. In regard to this the court said:

"The words of the law are 'once a week.' Does this limit the publication to a particular day of the week? If the notice be published on Monday, is it fatal to omit the publication until the Tuesday week following? The object of the notice is as well answered by such a publication as if it had been made on the following Monday. A week is a definite period of time, commencing on Sunday and ending on Saturday. By this construction the notice in this case must be held sufficient. It was published Monday, January 6th, and omitted until Saturday, January the 18th, leaving an interval of eleven days; still the publication on Saturday was within the week succeeding the notice of the 6th. It would be a most rigid construction of the act of Congress, justified neither by its spirit nor by its language, to say that this notice must be published on any particular day of a week. If published once a week for three months, the law is complied with, and its object effectuated."

It is clear to us that the ruling of the court below in the present case is not antagonistic to what was said by the Supreme Court of the United States in the case cited. The question was not the same in that case as that now before us. It is very plain that, when that court said that "a week was a definite period of time commencing on Sunday and ending on Saturday," it did not mean that a week might not more generally be described as a period of seven consecutive days, without reference to any specific day of commence

ment. With regard to the case before that court, it was held that the one advertisement required might be made on any day of the conventional week. But if the question had been as to when the week should begin to be counted for the purpose of the determination of the entire period for which the advertisement should be inserted, certainly we are justified in assuming that it would hold, in accordance with the common understanding of the word, that a week might begin on any day for the purposes of the act.

We are of opinion, therefore, that the publication here had was duly made for the time prescribed by the act of Congress and the order of the court, and that there was no want of jurisdiction in the court by reason of any insufficient publication.

It is argued in the next place, that it was error on the part of the trial court to direct a verdict for the caveatees. The argument goes so far as to deny the right of that court to direct a verdict in any case or under any circumstances upon issues formulated under this act of Congress. But we know of no special sanctity that inheres in cases of this character to exclude the ordinary supervising power of the court and to conserve to the jury the arbitrament not only of questions of fact, but equally of questions of law, as this argument would require. On the contrary, the act of Congress itself specifically provides that the trial justice shall have "all the powers now vested by law in the supreme court of the District of Columbia holding a special term as a circuit court," including therein the power to settle bills of exceptions, to set aside verdicts, and to grant new trials, all the powers, in fact, which have been exercised in the courts of common law from time immemorial in the trial of issues transmitted to them from the orphans' court. The act of 1898 had two great purposes to subserve, the one to assimilate the probate of wills of real estate to the previously existing law which governed the matter of the probate of wills of personalty, and the other to authorize the trial of issues in the probate court itself, instead of having them transmitted to the common-law branch of the court for trial; and it certainly contemplated, and it made, no change in the previously existing and well-settled practice on the trial of issues.

The right of the trial court, therefore, to instruct the jury, and in proper cases to direct a verdict, cannot reasonably be controverted; and the only question open here is whether the present was a proper case in which to direct a verdict; that is, whether there was any sufficient testimony in this case upon any of the issues proper to be submitted to a jury. We are of opinion that the trial court ruled rightly that there was no such testimony. We have sought in vain through the testimony embodied in the bill of exceptions for even a scintilla of evidence proper to go to a jury. The only portion of the testimony seriously insisted on by the appellants in this connection is a part of the deposition of Rev. Hugh T. Stevenson, the pastor of the church of which the deceased testator was a member. This deposition was originally taken by the caveatees, and was intended to be used on their behalf; but the caveators offered a portion of it in evidence for themselves. The substance of this was

that the witness was the pastor of the church of which the testator was a member; that the testator had always been active in church matters, and was a member of the executive committee of the denomination to which he belonged; that he was a man of excellent ability and intelligence, and well competent to transact business up to the very end of his life; that the witness observed no change in his business capacity to the time of his death; that a few hours before the testator's death, the testator had sent for witness, and had stated to him that he had wanted to give the church a parsonage, but that it was too late now to do it, in view of the prohibitions of the
34 law; and that he now desired to execute some paper whereby his property would be vested in Samuel H. Lucas, who would give effect to his wishes in regard to the church; that this Samuel H. Lucas was a colored man whom the testator had taken into his service years before, and for whom, having no family of his own, he had taken a great fancy, and to whom, in fact, he had for a long time committed the management of his business; that, accordingly, in pursuance of the testator's directions, the witness had prepared a paper in the form of a deed, and had sent for a notary to come in and see to its execution; that the appellee Burr, who was a friend of the testator and who is named as executor in the will, had also been sent for; that, after the preparation of the deed, its signature by Leach, and acknowledgment by him, but before the notary had affixed any certificate to it, the witness expressed some doubt, in view of his ignorance of such matters, whether the paper was in proper form for the purpose, and he suggested to Leach that, in order to make things sure, he might make a will; that accordingly the testator directed the notary to draw up a will, and the notary drew up the will in question, which was duly executed by the testator; and that Samuel H. Lucas had no part whatever in the procurement of the will. It also appears that the deed prepared by Mr. Stevenson had never been completed by the attachment of the official certificate of the notary and had never been delivered.

Upon this testimony it was argued that a jury might fairly have inferred the exercise of undue influence by Stevenson on the testator. But we fail to find any justification for such an inference. Even assuming that the opportunity for such influence was present, and that the relations between the testator and Stevenson were such as to throw upon the caveatees the burden of proving that no such undue influence was exercised, as to which under the circumstances there is reason to doubt, yet the fact is that the testimony of Stevenson fully and fairly sustains that burden. He became the witness of the caveators; they introduced his deposition in evidence, and thereby they vouched for his integrity and truthfulness. He tells a straightforward story, in itself not unreasonable; and so far as it is possible to prove a negative, his statement completely disproves the exercise of any undue influence by him upon the testator. The utmost that could be said of the transaction in this regard is, that the opportunity was present for the exercise of such influence, and that being a minister of the Gospel he might justly be suspected of doing what ministers of the Gospel have often done under similar

circumstances. But suspicion is not proof, and proof is required to sustain the charge of fraud, as well as every other fact alleged and required to be sustained by him who alleges it. The statement of the transaction as given by Stevenson, a statement for which the caveators have vouched by giving it in evidence, contains not one scintilla of evidence that he exercised any influence whatever over the testator. On the contrary, it is decisive to the effect that the scheme of the will emanated solely and exclusively from the testator himself.

The last contention on behalf of the appellants is that the will in question was inoperative, because the testator, as it is alleged, had already conveyed the same property by deed which he attempted to convey by the will. But plainly this contention is untenable. It is very clear from the testimony that the alleged deed was never completed, and lacked the essential element of delivery. Moreover, it is not quite apparent from the record before us what property, if any, the deed purported to convey, or whether it was drawn in a manner to convey any property. It is not contained in this record; and it does not appear from the record that it was ever offered in evidence in the case. And yet it seems to have been accessible to the appellants; and if it was important for their contention in the cause to have it introduced in evidence, they could have compelled its production. The fact that they did not do so is evidence that it would not have greatly served their purpose. And even if the fact be that it was actually introduced in evidence, we have no means of determining its contents, since, as we have stated, it is not contained in the record before us, and there is nothing in the record to show either its contents or its operative character. We are not justified, therefore, in assuming that the deed, even if we could suppose it to have been completed and to have been actually delivered to the grantee, conveyed the same property upon which the will was intended to operate.

Moreover, if the deed in question was valid to convey the testator's property to the grantee named in it, it is not apparent how the appellants can be prejudiced by the admission of the will to probate. For, since the grantee in the deed and the donee under the will are one and the same person, if the grantee has already good title under the deed, as against the appellants, certainly the appellants cannot be injured by such confirmation, if any, as the will may give to the previous grant. The fact that, by the act of Congress, the adjudication on the will in the present proceeding is made a finality as to the validity of the will, cannot have the effect of substituting that will for the prior deed, if that prior deed was a valid operative instrument; and if it was not a valid operative instrument, of course, the contention of the appellants wholly fails.

We find no error in the record; and the order and judgment appealed from must therefore be affirmed, with costs. And it is so ordered.

35 TUESDAY, *November 6th, A. D.* 1900.

GUSTAVUS LEACH, WILLIAM F. LEACH, CHESTER H. Shaw, George L. Shaw, Howland L. Hunt, Francis H. Hunt, Alice O. McNeil, William W. Hunt, Emma G. McNeil, Edward E. Hunt, Judson Hunt, Howland N. Hunt, Arthur A. Hunt, Cyrus P. Reed, and Gustavus L. Reed, Appellants,

vs.

CHARLES R. BURR, Executor, and SAMUEL H. Lucas.

No. 997, October Term, 1900.

Appeal from the supreme court of the District of Columbia.

This cause came on to be heard on the transcript of the record from the supreme court of the District of Columbia and was argued by counsel. On consideration whereof it is now here ordered and adjudged by this court that the order and judgment of the said supreme court in this cause be, and the same is hereby, affirmed with costs.

Per MR. JUSTICE MORRIS.

November 6, 1900.

36 THURSDAY, *November 15th, A. D.* 1900.

GUSTAVUS LEACH, WILLIAM L. LEACH, CHESTER H. SHAW, George L. Shaw, Howland L. Hunt, Francis H. Hunt, Alice O. McNeil, William W. Hunt, Emma G. McNeil, Edward E. Hunt, Judson Hunt, Howland N. Hunt, Arthur A. Hunt, Cyrus P. Reed, and Gustavus L. Reed, Appellants,

vs.

CHARLES R. BURR, Executor, and SAMUEL H. LUCAS.

No. 997.

On motion of Mr. W. D. Davidge, Jr., attorney for the appellants in the above-entitled cause, it is ordered by the court that a writ of error to remove said cause to the Supreme Court of the United States be, and the same is hereby, allowed on giving bond in the sum of three hundred dollars.

37 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the Court of Appeals of the District of Columbia, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Court of Appeals before you, or some of you, between Gustavus Leach, William F. Leach, Chester H. Shaw, George L. Shaw, Howland L. Hunt, Francis H. Hunt, Alice O. McNeil, William W. Hunt, Emma G. McNeil, Edward E. Hunt, Judson Hunt, Howland N. Hunt, Arthur A. Hunt, Cyrus P. Reed, and Gustavus L. Reed, appellants and Charles R. Burr, executor and Samuel H. Lucas, appellees a manifest error

hath happened, to the great damage of the said appellants as by their complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington, within 30 days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States should be done.

Seal Court of Appeals, District of Columbia.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 15th day of November, in the year of our Lord one thousand nine hundred.

ROBERT WILLETT,
Clerk of the Court of Appeals of the District of Columbia.

38 FRIDAY, *January 11th, A. D.* 1901.

GUSTAVUS LEACH, WILLIAM F. LEACH, CHESTER H. SHAW, George L. Shaw, Howland L. Hunt, Francis H. Hunt, Alice O. McNeil, William W. Hunt, Emma G. McNeil, Edward E. Hunt, Judson Hunt, Howland L. Hunt, Arthur A. Hunt, Cyrus P. Reed, and Gustavus L. Reed, Appellants,

vs.

CHARLES R. BURR, Executor, and SAMUEL H. LUCAS.

No. 997.

The motion to approve the bond on writ of error to the Supreme Court of the United States was submitted to the consideration of the court by Mr. W. D. Davidge Jr., in support of motion and by Mr. J. J. Darlington in opposition thereto: Whereupon it is ordered that said motion be, and the same is hereby, overruled.

39 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable the justices of the supreme court of the District of Columbia, Greeting:

[Seal Court of Appeals, D. C.]

Whereas, lately in the supreme court of the District of Columbia, before you or some of you, in a cause entitled *In re* estate of Ezra W. Leach, No. 7571, probate, wherein the order of the said supreme court entered in said cause on the 17th day of March, A. D. 1900, is in the following words, viz:

"*In re* Estate of EZRA W. LEACH. No. 7571.

Order.

The issues certified to the supreme court for trial by jury under an order passed herein on the 1st day of June, 1899, under the caveat to the will of Ezra W. Leach, filed by Cyrus P. Reed, Gustavus L. Reed, Gustavus Leach, William F. Leach, Chester H. Shaw, George L. Shaw, Howland L. Hunt, Francis H. Hunt, Alice O. McNeil, Emma G. McNeil, William W. Hunt, Edward E. Hunt, Judson Hunt, Howland A. Hunt, and Arthur E. Hunt, having been found in favor of the said will, as appears to the satisfaction of the court by the answers of the jurors to the said issues, certified by the clerk, and filed herein, it is by the court, this 17th day of March, A. D. 1900, adjudged, ordered, and decreed that the paper-writing bearing date the 21st day of December, 1896, purporting to be the last will and testament of Ezra W. Leach, be, and the same hereby is, admitted to probate and record, and that letters testamentary upon the estate of the said decedent do issue to Charles R. Burr, the executor therein named, upon his giving bond in the penalty of five hundred dollars, conditioned for the faithful performance of his trust; and it is further adjudged, ordered, and decreed that the said Charles R. Burr, the executor, as aforesaid, do recover against the said caveators the costs incurred under their said caveat; which costs are hereby taxed at the sum of $49.10 *dollars*, and that they have execution therefor as at law.

And the said paper-writing bearing date the said 21st day of December, 1896, having been further offered as a will of real estate, as provided by law, and it appearing to the satisfaction of the court that the issues framed upon the caveat filed against the admission of the said paper-writing for probate and record as prayed have been determined in favor of the said will at the trial thereof before a jury, after due proof of the notice of publication required by the order of the court, and no other further issues having been demanded by any party in interest, after due opportunity afforded therefor, and the motion of the caveator for a new trial having been heard and overruled, it is by the court, this 17th day of March, A. D. 1900, further adjudged, ordered, and decreed that the said paper-writing be, and the same hereby is, admitted to probate and record as the valid last will and testament of the said Ezra W. Leach, duly executed to pass real estate of the said testator within said District; and it is further adjudged, ordered, and decreed that the said Charles R. Burr, executor, as aforesaid, do recover against the said caveators the cost of the proceedings to determine the validity of the said will as a will of real estate, which *are* hereby taxed at the sum of $128.24 *dollars*, and that he have execution therefor as at law.

CHAS. C. COLE, *J.*"

40 as by the inspection of the transcript of the record of the said supreme court, which was brought into the Court of Appeals of the District of Columbia by virtue of an appeal, taken by Gustavus

Leach, William F. Leach, Chester H. Shaw, George L. Shaw, Howland L. Hunt, Francis H. Hunt, Alice O. McNeil, William W. Hunt, Emma G. McNeil, Edward E. Hunt, Judson Hunt, Howland N. Hunt, Arthur A. Hunt, Cyrus P. Reed and Gustavus L. Reed, whereon Charles R. Burr executor, and Samuel H. Lucas, were made the parties appellee, agreeably to the act of Congress in such case made and provided, fully and at large appears.

41 And whereas, in the term of October, in the year of our Lord one thousand nine hundred, the said cause came on to be heard before the said Court of Appeals on the said transcript of record, and was argued by counsel:

On consideration whereof it is now here ordered and adjudged by this court that the order and judgment of the said supreme court in this cause be, and the same is hereby, affirmed with costs; and that the said Charles R. Burr, executor, and Samuel H. Lucas recover against the said Gustavus Leach *et al.* for their costs herein expended and have execution therefor.

NOVEMBER 6, 1900.

42 You therefore are hereby commanded that such execution and proceedings be had in said cause as according to right and justice and the laws of the United States ought to be had, the said appeal notwithstanding.

Witness the Honorable Richard H. Alvey, Chief Justice of said Court of Appeals, the 11th day of January, in the year of our Lord one thousand nine hundred and one.

Costs of Chas. R. Burr, Ex'r, et al.

Clerk..... $
Printing record.....

$

Paid by Leach *et al.*

ROBERT WILLETT,
Clerk of the Court of Appeals of the District of Columbia.

[Endorsed:] Court of Appeals of the District of Columbia. No. 997, Octo. term, 1900. Gustavus Leach *et al.*, appellants, *vs.* Charles R. Burr, exec'r, *et al.* Mandate.

43 In the Court of Appeals of the District of Columbia.

GUSTAVUS LEACH, WILLIAM F. LEACH, CHESTER H. SHAW, George L. Shaw, Howland L. Hunt, Francis H. Hunt, Alice O. McNeil, William W. Hunt, Emma G. McNeil, Edward E. Hunt, Judson Hunt, Howland N. Hunt, Arthur A. Hunt, Cyrus P. Reed, and Gustavus L. Reed, Appellants,

vs.

CHARLES R. BURR, Executor, and SAMUEL H. LUCAS.

No. 997.

To the honorable the Chief Justice and associate justices of the Supreme Court of the United States:

Now come Gustavus Leach, William F. Leach, Chester H. Shaw, George L. Shaw, Howland L. Hunt, Francis H. Hunt, Alice O. McNeil, William W. Hunt, Emma G. McNeil, Edward E. Hunt, Judson Hunt, Howland N. Hunt, Arthur A. Hunt, Cyrus P. Reed, and Gustavus L. Reed, the appellants in the cause above entitled and say that heretofore to wit, on the 6th day of November, 1900, in the Court of Appeals of the District of Columbia wherein the said cause was then depending and in which they were the parties appellant and Charles R. Burr, executor and Samuel H. Lucas were the parties respondent, judgment in said cause was entered by the said court in favor of the said respondents and against these appellants by which judgment these appellants were and are aggrieved in that in said judgment and the proceedings had prior thereto in said cause wherein the matter in dispute exceeds the sum or value of five thousand dollars certain errors were committed to the prejudice of these appellants for which they make assignment of error as follows, viz:

1. Said Court of Appeals erred in sustaining the rulings of the court below and each and every of them severally.

2. Said Court of Appeals erred in its decision that the court
44 below had acquired jurisdiction of each and every the non-resident parties to said cause by due publication.

3. Said Court of Appeals erred in sustaining the court below in taking the cause away from the jury and in directing such jury what verdict they should find and what answers make to the several issues joined.

Wherefore these appellants pray that a writ of error may issue to the said Court of Appeals for the District of Columbia for the correction of the errors complained of, and that a duly authenticated transcript of the record, proceedings and papers herein may be sent to the Supreme Court of the United States to the end that such errors may be corrected as of right and according to the laws and customs of the United States should be done.

W. D. DAVIDGE,
WILLIAM A. MELOY,
Att'ys for App'lts.

(Endorsed:) Gustavus Leach *et al.* pl'ffs in error, *vs.* Charles R. Burr, *et al.*, def'ts in error. Washington May 29, 1901. Let the writ of error issue as prayed, on pl'ffs in error filing bond in the penal sum of three hundred dollars, conditioned according to law, & approved by the undersigned Melville W. Fuller, Chief Justice of the United States. Court of Appeals, District of Columbia. Filed Jun- 1 1901. Robert Willett, clerk.

45 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the Court of Appeals of the District of Columbia, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Court of Appeals of the District of Columbia, before you, or some of you, between Gustavus Leach; William F. Leach; Chester H. Shaw; George L. Shaw; Howland L. Hunt; Francis H. Hunt; Alice O. McNeil; William W. Hunt; Emma G. McNeil; Edward E. Hunt; Judson Hunt; Howland N. Hunt; Arthur A. Hunt; Cyrus P. Reed; Gustavus L. Reed, appellants, and Charles R. Burr, executor; and Samuel H. Lucas, appellees, a manifest error hath happened, to the great damage of the said Gustavus Leach; William F. Leach; Chester H. Shaw; George L. Shaw; Howland L. Hunt; Francis H. Hunt; Alice O. McNeil; William W. Hunt; Emma G. McNeil; Edward E. Hunt; Judson Hunt; Howland N. Hunt; Arthur A. Hunt; Cyrus P. Reed and Gustavus L. Reed, appellants, as by their complaint appears, we being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington, within 30 days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness, the Honorable Melville W. Fuller, Chief Justice of the United States, the 31st day of May, in the year of our Lord one thousand nine hundred and one.

[Seal of the Supreme Court of the United States.]

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

Allowed by
MELVILLE W. FULLER,
Chief Justice of the United States.

[Endorsed:] Gustavus Leach *et al.* pl'ffs in error *vs.* Charles R. Burr *et al.* def'ts in error. Writ of error. Court of Appeals, District of Columbia. Filed Jun- 1, 1901. Robert Willett, clerk.

46 Know all men by these presents that we, Tracy L. Jeffords and John H. Adriaans, as principals, and William Anderson, as surety, are held and firmly bound unto Charles R. Burr, executor, and Samuel H. Lucas in the full and just sum of three hundred (300) dollars, to be paid to the said Charles R. Burr, executor, and Samuel H. Lucas, their certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this twentieth day of May, in the year of our Lord one thousand nine hundred and one (1901).

Whereas, lately at a Court of Appeals of the District of Columbia, in a suit depending in said court, between Gustavus Leach; William F. Leach; Chester H. Shaw; George L. Shaw; Howland L. Hunt; Francis H. Hunt; Alice O. McNeil; William W. Hunt; Emma G. McNeil; Edward E. Hunt; Judson Hunt; Howland N. Hunt; Arthur A. Hunt; Cyrus P. Reed; Gustavus L. Reed, appellants; and Charles R. Burr, executor, and Samuel H. Lucas, appellees a judgment was rendered against the said appellants and the said appellants having obtained a writ of error and filed a copy thereof in the clerk's office of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said appellees citing and admonishing them to be and appear at a Supreme Court of the United States, to be holden at Washington within 30 days from the date thereof,

Now, the condition of the above obligation is such, that if the said appellants Gustavus Leach; William F. Leach; Chester H. Shaw; George L. Shaw; Howland L. Hunt; Francis H. Hunt; Alice O. McNeil; William W. Hunt; Emma G. McNeil; Edward E. Hunt; Judson Hunt; Howland N. Hunt; Arthur A. Hunt; Cyrus P. Reed Gustavus L. Reed shall prosecute their said writ of error to effect, and answer all damages and costs if they fail to make their plea good, then the above obligation to be void; else to remain in full force and virtue.

TRACY L. JEFFORDS. [SEAL.]
JOHN H. ADRIAANS. [SEAL.]
his
WILLIAM x ANDERSON. [SEAL.]
mark.

Sealed and delivered in the presence of—
As to mark of William Anderson:
BOYD WATSON.
LOUIS B. TETENS.

Approved by—
MELVILLE W. FULLER,
Chief Justice of the United States.

[Endorsed:] No. 997. Gustavus Leach *et al.* appellants *vs.* Charles R. Burr, exec'r, *et al.* Bond on writ of error to Supreme Court U. S. Court of Appeals District of Columbia. Filed June 1, 1901. Robert Willett, clerk.

47 UNITED STATES OF AMERICA, *ss*:

To Charles R. Burr, executor, and Samuel H. Lucas, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within 30 days from the date hereof, pursuant to a writ of error filed in the clerk's office of the Court of Appeals of the District of Columbia wherein Gustavus Leach, William F. Leach, Chester H. Shaw, George L. Shaw, Howland L. Hunt, Francis H. Hunt, Alice O. McNeil, William W. Hunt, Emma G. McNeil, Edward E. Hunt, Judson Hunt, Howland N. Hunt, Arthur A. Hunt, Cyrus P. Reed, and Gustavus L. Reed are the plaintiffs in error and you are defendants in error, to show cause, if any there be, why the judgment rendered against the said plaintiffs in error as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Melville W. Fuller, Chief Justice of the United States, this 29th day of May, in the year of our Lord one thousand nine hundred and one.

MELVILLE W. FULLER,
Chief Justice of the United States.

[Endorsed:] Court of Appeals, District of Columbia. Filed Jun 8, 1901. Robert Willett, clerk.

On this 8th day of June, in the year of our Lord one thousand nine hundred and one, personally appeared before me, the subscriber, Henry M. Dexter, and makes oath that he delivered a true copy of the within citation to Joseph J. Darlington, attorney for appellees on the 8th day of June, 1901; and to the appellees Charles R. Burr, executor, and Samuel H. Lucas personally on the 7th day of June, 1901.

HENRY M. DEXTER.

Sworn to and subscribed the 8th day of June, A. D. 1901.
ROBERT WILLETT, *Clerk*,
By H. W. HODGES, *Ass't Clerk*.

48 Court of Appeals of the District of Columbia.

I, Robert Willett, clerk of the Court of Appeals of the District of Columbia, do hereby certify that the foregoing printed and typewritten pages, numbered from 1 to 47, inclusive, contain a true copy of the transcript of record and proceedings of said Court of Appeals in the case of Gustavus Leach, William F. Leach, Chester H. Shaw, George L. Shaw, Howland L. Hunt, Francis H. Hunt, Alice O. McNeil, William W. Hunt, Emma G. McNeil, Edward E. Hunt, Judson Hunt, Howland N. Hunt, Arthur A. Hunt, Cyrus P. Reed, and Gustavus L. Reed, appellants, *vs.* Charles R. Burr, executor, and Samuel H. Lucas, No. 997, April term, 1901, as the same remain upon the files and records of said Court of Appeals.

Seal Court of Appeals, District of Columbia.

In testimony whereof I hereunto subscribe my name and affix the seal of said Court of Appeals, at the city of Washington, this 18th day of June, A. D. 1901.

ROBERT WILLETT,
Clerk of the Court of Appeals of the District of Columbia.

Endorsed on cover: File No. 18238. District of Columbia Court of Appeals. Term No. 385. Gustavus Leach, William F. Leach, Chester H. Shaw, *et al.*, plaintiffs in error, *vs.* Charles R. Burr, executor, and Samuel H. Lucas. Filed July 26, 1901.